Honourable Jim Fleming
Minister of State
Multiculturalism

L'honorable Jim Fleming
Ministre d'État
Multiculturalisme

Race Relations and the Law

Canada

Race Relations and the Law

Report of a symposium held in
Vancouver, British Columbia
April 22-24, 1982

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Background

The Multiculturalism Program

The Symposium on Race Relations and the Law in Vancouver, B.C., April 22-24, 1982 was the final event held to commemorate the 10th anniversary of the Multiculturalism policy and program in Canada. When the policy was announced in Parliament in 1971, four major objectives were stated:

- to assist cultural groups to retain and foster their identity;
- to assist cultural groups to overcome barriers to their full participation in Canadian society;
- to promote creative exchanges and interchanges among all Canadian cultural groups; and
- to assist immigrants in acquiring at least one of the official languages.

Consistent with these objectives, the Multiculturalism Program addresses two basic themes: cultural retention and socio-cultural integration.

For most of the '70s, multiculturalism programs, at both the federal and provincial levels, emphasized cultural retention and intergroup activities of a folkloric and artistic nature. But in the latter part of the decade, the need was recognized for a vigorous parallel thrust to advance the second of the basic aims - removing the social and cultural barriers that separate the minority from the majority groups in Canadian society. Thus, while the program will continue to assist minority groups to fulfill their aspirations to a rightful place in a pluralistic Canadian society, it must, at the same time, help develop a milieu that understands and accommodates the needs and aspirations of its minority groups. From being perceived as a cultural policy for minority groups, Multiculturalism becomes a working definition for a society based on equal enjoyment of social and cultural rights for all.

In carrying forward the concept of Multiculturalism to the wider society, the program addresses the social issues that increasingly arise in the multi-racial Canadian community.

National Program to Combat Racism

The new focus of the Multiculturalism Program coincides with a period of serious difficulties for race relations in Canada. Economic decline has sharpened social anxieties. In large cities, immigration has noticeably changed the composition of the population. Extremist groups have emerged to promote racist ideas. There has been an increase in incidents of racial discrimination and racially motivated harassment and violence, particularly in large urban centres. Racism, both overt and institutionalized, is a major obstacle to the full participation in Canadian life of visible minority groups.

In recognition of the serious social implications inherent in the current climate of race relations and in response to demands for action by visible minorities, the Minister of State for Multiculturalism announced on June 10, 1981, an immediate allocation of $1.5 million toward a national program to combat racism, commencing with three specific initiatives.

First, a Race Relations Unit was established within the Multiculturalism Directorate. Its primary objective is to conduct or contract research to measure the nature and extent of racism in Canada and to this end the directorate commissioned a Gallup Omnibus Survey on racial attitudes, as well as situation reports on racism in 11 major urban centres.

Second, a campaign of public education was initiated to change attitudes by providing information and correcting misinformation about minority groups and their contributions to Canadian society. Conducted principally through the mass media, the campaign is directed at the general public, minority groups and schools across the country.

The third initiative was the National Symposium on Race Relations and the Law. This meeting was conceived as an occasion to bring together officials concerned with the administration and enforcement of the law, experts in the fields of law and human rights, and representatives of community organizations, active in the area of race relations. The delegates would share ideas and insights and develop proposals regarding the role and use of the law to fight racial discrimination and harassment. The symposium would also explore ways of improving race relations within the criminal justice system.

Symposium on Race Relations and the Law

The request for a federal conference on means of combatting racism had come from such ethnocultural organizations as the Canadian Jewish Congress and the National Black Coalition of Canada. In bringing to reality the specific proposal for a meeting on race relations and the law, the Multiculturalism Directorate sought the participation of federal agencies and the community groups directly concerned with the questions of law and race relations. At the official level, an Interdepartmental Planning Committee (IPC) was formed, comprising representatives of the Department of Justice, the Department of the Solicitor General, the Canadian Human Rights Commission, and the Multiculturalism Directorate. To channel community group input into the planning process, the minister struck an Ad Hoc Advisory Group of representatives from 12 national ethnocultural organizations. This group met three times and presented proposals to the planning committee for the format, topics and resource persons for this symposium. The chairman of the advisory group also attended meetings of the IPC.

The scope and form of the symposium that emerged in the planning process reflected the desire for intensive and fruitful exchanges among a relatively small number of knowledgeable participants. It was decided to limit attendance to 120 persons who would interact in workshops of about 30 persons each. Invitations went out to governments, professional associations, and community organizations. One third of the participants would come from organizations and agencies representing various ethnocultural communities. Another third would represent federal and provincial agencies in the fields of law-formulation, administration of justice and human rights. The rest would include representatives named by mayors of about 12 cities across Canada, and representatives of associations with a professional interest in the subject matter of the symposium.

Finally, three major themes were identified:

- Criminal Law and Race Relations
- Race Relations and the Criminal Justice System
- Non-legal, Civil or Community Responses.

To facilitate discussion, major theme papers were circulated prior to the symposium.

Summary of Proceedings

PROCEEDINGS

Proceedings began on the evening of Thursday, April 22, with words of welcome to the participants and guests from the chairperson of the symposium, Chief Justice Jules Deschênes of the Superior Court of Quebec. The chairperson then introduced the Minister of State for Multiculturalism, the Honourable Jim Fleming who addressed the opening session on the topic "Racial Violence: Could It Happen Here?"

Referring to race-related riots in British and American cities, the minister noted that the racial prejudice, discrimination and harassment proliferating in other countries is also increasing in Canada. Mr. Fleming referred to the Gallup Omnibus Study commissioned by the Multiculturalism Directorate. The results had shown that 31 per cent of respondents would support organizations that worked toward an all-White Canada. While other statistics from the study were more encouraging, it was suggested that people be wary of such findings since they may only reflect a tendency to repress overt expression of racist attitudes.

Numerous examples were cited of racist incidents occurring across Canada, occurrences that tend to make headlines. More insidious and less attention-getting is the "institutionalized racism" which, as the minister stated, "is built into society through its norms, telling people how they should feel and act: who should be hired, promoted or housed, who should be educated and groomed for leadership." Study after study has consistently demonstrated that the visible minority groups do not have equality of access to Canadian institutions. Therefore, Mr. Fleming emphasized, the system, as well as attitudes, have to be changed to eliminate what is effectively becoming "second class citizenship" for an increasing proportion of the Canadian population. Further, such change must occur before current tensions, exacerbated by the economic situation, result in the same racial violence that has plagued other nations.

The minister stressed the need to translate the egalitarian principles of the new Charter of Rights and Freedoms into action. A critical examination of the law and the legal process is a crucial element in this process. The symposium was part of the Government of Canada's determination to improve race relations. He expressed the hope that the conference would produce suggestions for improving Canada's criminal law and criminal justice system. The minister pledged his government's commitment to translate into reality the principle of equality of all groups and individuals, irrespective of race.

Agenda

RACE RELATIONS AND THE LAW

Conference general chairperson: Mr. Justice Jules Deschênes

Thursday, April 22

1600 - 1930	Registration
1930 - 2030	Opening session Welcome: Hon. Jules Deschênes Keynote address: Hon. Jim Fleming
2030 - 2230	Reception

Friday, April 23

0930 - 1100	First plenary Principal theme paper - Israel Ludwig
1100 - 1115	Coffee
1115 - 1200	Criminal Law and Race Relations Theme I presentation Presenter: Prof. Walter Tarnopolsky

WORKSHOPS: Participants have been assigned to one of four workshop groups, for the duration of the symposium. Group chairpersons and rapporteurs have been identified as follows:

	Chairpersons	Rapporteurs
Group 1	Russell Juriansz	Jean Gammage
Group 2	Art Lee	Jamshed Mavalwala
Group 3	Claudius Leger	Lewis Chan
Group 4	Rosanna Scotti	David Matas

Friday, April 23 (continued)

1200 - 1300	Lunch
1300 - 1430	Four Simultaneous Workshops on Theme I
1430 - 1500	Coffee
1500 - 1545	The Criminal Justice System and Race Relations - Theme 2 presentation Presenter: Mrs. Juanita Westmoreland-Traoré
1545 - 1715	Four Simultaneous Workshops on Theme 2 Conference Banquet Host: Hon. Jim Fleming Chair: Mr. Gordon Fairweather Dinner speaker: Ms. Usha Prashar

Saturday, April 24

0930 - 1015	Non-Legal, Civil and Community Response - Theme 3 presentation Presenter: Prof. Joya Sen
1015 - 1030	Coffee
1030 - 1200	Four Simultaneous Workshops on Theme 3
1230 - 1400	Luncheon Speaker: Prof. Wilson A. Head
1400 - 1600	Closing plenary: Reports by rapporteurs Open discussion Closing remarks by Hon. Jules Deschênes and Hon. Jim Fleming

Racial Violence : Could it Happen Here?

Address by
Hon. Jim Fleming,
Minister of State for Multiculturalism

"This is a multicultural nation. There is no place in Canada for second class citizenship. We must act now to ensure that the laws of this country as enacted and applied, reflect the equality of all groups and individuals, irrespective of race.

"Racism is one of the most dangerous threats to the freedom of individual choice. The greatest contribution that we can make is to ensure that the egalitarian principles upon which our new constitution is based are translated into action including the law and the process."

Ladies and gentlemen:

I've been re-reading, with some apprehension, the recent postmortem by Lord Scarman on the riots that gutted the heart of London's Brixton district last spring. Blame was laid on lack of jobs and decent housing, but beneath this was the ugly fact of racial discrimination, reminiscent of Miami the year before, where social tension erupted in a rampage that added 15 deaths, 300 injuries, and nearly $200 million in damage to the appalling cost of racism over the years in the United States.

I'd like to believe, as I'm so often told, that it can't happen here. But more and more experts in race relations are saying it can. John McAlpine, author of the report on which B.C.'s new anti-racist legislation was based, says that "racism is widespread...with a potentiality to wreak havoc on our society."

At our recent Fourth Canadian Conference on Multiculturalism, last October, Jocelyn Barrow, a director of the British Broadcasting Corporation, told us: "We in Great Britain watched the disturbances in the United States and said it wouldn't happen to us. We'd stop it. Then we did nothing. Canada, she said, "had done much to foster a climate of equality, but more must be done if you want to avoid an explosion of racial tensions."

It's a fact that Canada has become an even more diverse country in recent years and still, we are a fundamentally tolerant people. But this doesn't grant us the luxury of complacency. The warning signs in this past year or two have been multiplying: attacks on the homes, cars or persons of East Indians and Pakistanis in the Vancouver area, in Edmonton, Lethbridge, Winnipeg, Toronto and Montreal. An increase in anti-Semitism: desecration of a Montreal synagogue, graffiti in Toronto's Robarts library, two Jewish youths coming home from a Winnipeg synagogue insulted and beaten. Attacks on native Indian youngsters on Vancouver Island, White/Indian confrontations near Dauphin and The Pas, and at Buffalo Narrows. Complaints of harassment by Winnipeg's Filipino community. A lengthening list of violence, verbal and physical. And we have to remember that most minor incidents go unreported.

The increase in racism in Canada coincides with an upsurge abroad. In Britain indiscriminate beatings of non-Whites are common, and young thugs are flocking to neo-Nazi organizations like the National Front. A West German poll last March showed that 13 per cent of voters held extreme rightwing views and that almost half of these approved of violence. In France this spring the graves of 80 Jews were desecrated. Anti-Semitic incidents there are not only growing in number, they've evolved from spoken and written insults to bullets and bombs. And one well-known French magazine is lending its pages to extremist philosophers who are trying to set up a rationale for racism.

In the United States, extremist groups are proliferating: The Committee of the Ten Million, the National States Rights Party, the National Socialist White People's Party, the para-military Christian Patriots Defence League.

Some racist groups are masquerading as new rightwing political organizations. Joseph Lowery, president of the Southern Christian Leadership Conference, once led by Martin Luther King, told Canadian church leaders last fall that he'd "never seen racism as vicious as it is today."

The incidence of anti-Jewish vandalism in the U.S. in 1981 was three times higher than in 1979; many Jews in Southern California no longer feel safe in their homes; bottles thrown through their windows, tires slashed, shops firebombed. In the past five years the Ku Klux Klan has doubled its U.S. membership and Klansmen in the U.S. have been convicted of such crimes as shooting into the homes of Blacks, bombing Black churches and Jewish synagogues, beatings and lynchings. Its youth corps, which calls itself "the future of the Klan," is taught that "civil war, another race war, is coming."

Not in Canada, we say. Canada is different. But is it? Francis Henry, a York University anthropologist who has studied racism, says Torontonians share the same psychological profile as Americans: about 18 per cent intensely dislike Blacks, Orientals and East Indians; about 15 per cent warmly accept people of all races and the rest are somewhere in between.

A Gallup Omnibus Study was recently commissioned by the Multiculturalism Directorate to measure the potential degree of support which exists among Canadians for the negative sentiments promoted by extremist groups such as the Ku Klux Klan. While some of the figures are encouraging, other results give us cause for concern.

Sixty-seven percent agreed that non-White immigration has made Canada a culturally richer country, but there was a 21 per cent component of disagreement, which tends to square with Professor Henry's conclusions. The poll also suggested that 19 per cent felt that riots and violence increase when non-Whites are let into the country.

And the Klan has been bringing its message of hate to Canadians. However trivial their numbers in the context of all these things that have been happening in Britain and the United States, they can't be ignored. They are here, they are bringing their message of hate. The KKK claims cells in every province except P.E.I., and it's been recruiting at schools in B.C., Alberta and Southern Ontario. Its Canadian leader, Alexander McQuirter, repudiates violence, yet incites it by cross burnings, by handing out hate literature, by inflammatory statements, unsupported by fact -- for example, "seventy-five percent of the handguns in Vancouver are owned by East Indians." The Klan is quiescent at the moment because McQuirter faces various criminal charges, but according to the Grand Wizard of the Klan in the U.S., Canada is fertile soil for bigotry.

In the Gallup Omnibus Study that I just mentioned, the results showed that 31 per cent would support organizations that worked towards a White-only Canada. How much of that is hardline racist?...how much the defensive recollection of "the good old days?" Regardless, the problem is there.

Some people are reassured by polls that show prejudice on the wane. A Toronto poll in December 1980, for example, showed 48 per cent rating themselves "not prejudiced at all" compared with only 40 per cent in 1979.

I suggest that we should be wary of such findings. As people acquire more education and awareness they learn that some attitudes aren't acceptable and they learn to suppress or modify them. It doesn't necessarily mean they're any less biased. I think there's food for thought in a 1971 study by two American social scientists. While I am leery of the methodology, it did prove a point. They wired up a group of students to a simulated lie detector and compared their responses to an unwired control group. The group who thought any lies would be caught show much more racial prejudice.

Whatever the proof or doubts inherent in attitudinal studies, there is undoubtedly a serious problem. And the remedy must be with more than words or reassurance.

In schooling, a seven-month study by psychiatrist Jerry Cooper found a high level of violence among Black youths in schools in the City of North York in Metropolitan Toronto, and serious problems involving vandalism, drugs and race relations. The study found that schools with as many as 40 per cent Black students had no Black teachers. Other studies confirm that some White teachers ignore Black students, or criticize them more and praise them less, which can be devastating.

Take jobs. The claim of racial discrimination in jobs by Toronto's race relations commissioner is supported by a recent planning council survey. It showed that the unemployment rate for West Indians and Pakistanis is double the average rate in Metro Toronto. This shouldn't surprise us in view of the findings of the Canadian Civil Liberties Association. Last year its members posed as employers looking only for Whites to hire. They contacted 10 Toronto employment agencies. Nine agreed to screen out non-Whites.

Take the vital area of non-White police relations. A Toronto Star poll last April showed a sharp rise over 18 months in the number of people who think the police are prejudiced against non-Whites, though interestingly, the increase is less among non-Whites than among Whites. In both Vancouver and Winnipeg, the police have been accused of not investigating racist incidents. And in Montreal, the director of Secours Haitien, a social service organization, says there are "daily misunderstandings between police and the Haitian community."

Most leaders of our visible minorities are moderate, reasonable people who respect the law. But if some should feel, rightly or wrongly, that justice is being denied them, frustration could quickly rise to the flash point.

This is often a natural reaction from the affected communities. It's precisely what happened on a larger scale in Miami and the London district of Brixton. Some experts say the basis for widespread trouble is reached if services are inadequate when a city's visible minority reaches four or five per cent. Others, such as Dr. Daniel Cappon, a psychiatrist at York University and the former mental health director for the mostly-Black core city of Baltimore, say that the critical mass is 10 per cent. According to York University's Institute of Behavioural Research, Metro Toronto's visible minority is now more than 11 per cent.

Economic pressures increase resentment and fear. All the evidence suggests that when jobs are scarce, as they are now, frustration surfaces as racism. U.S. records dating back to 1832 indicate that more Blacks were lynched in years when cotton prices were low than in years of prosperity. Unemployment in Brixton was 20 per cent, double the national average in Britain. And during the late 1920s in Saskatchewan, when low prices of grain caused widespread distress, the Ku Klux Klan gained enough strength to play a significant role in bringing down the government of the day.

Inflation undermines confidence and this, too, feeds racial tensions. Welfare and social service costs go up. And as Joe Manyoni, Professor of Race Relations at Carleton University, says: "People are looking for a scapegoat for their problems and blame the immigrants who are visible targets."

Such feelings are aggravated by social change. The most prejudiced area of England, for example, is the northwest, the area where the most change has taken place. Conversely, the southeast, the area with the least prejudice, is the area that has undergone least change. When neighborhoods change drastically people become disturbed, and even if only part of that change is a growth in the visible minority, they may be identified with all problems producing conscious or unconscious racism.

Twenty years ago, Toronto was 70 per cent Anglo-Saxon. It had only a couple of hundred families of Blacks and a few South Asians. But as Europe grew more prosperous, fewer Europeans emigrated. As a result of Canada removing its quota system in the early 1960s, there has been a significant increase in non-White immigration. Consequently, the cultural makeup of cities across Canada has undergone considerable change during this period.

Today, more than half the school children in cities such as Vancouver and Toronto come from homes where English is the second language. Even some well-educated, tolerant Whites feel that change is coming too fast. In a 1980 Gallup poll 42 per cent of Canadians said immigration levels should be lowered, up from 39 per cent in a similar poll five years before. In the recent Gallup poll commissioned by my directorate, 12 per cent said that all non-White immigration should be stopped.

But the hard fact is that 200,000 immigrants a year will be needed just to keep our population at present levels. The Department of Employment and Immigration estimates that over the next 10 years we'll need 600,000 new workers, up to 100,000 in Ottawa's high-tech area alone. Our colleges and universities don't turn out enough skilled workers, so unless we let lack of skills curb growth we'll have to go on recruiting in developing countries in Africa, Asia, South America and the Caribbean. In other words, the population mix will continue to change.

The roots of prejudice grow from a tangle of causes: historic, economic, psychological and social. Scholars link prejudice to fear and unconscious envy, to frustration, to neglect or rejection in childhood, to low education, low income, rural isolation, ideology and lack of understanding.

Surveys show that prejudice has declined in recent years but discrimination hasn't lapsed at the same rate. Clearly prejudice is not the only factor. Discrimination is also held in place, experts say, by the motivating privilege and power.

This view traces our social structure back to the 16th century and concludes that it was the expansion of European power overseas that created racial inequality. Cheap labor was essential to the wealth and position of colonial Whites, who invented the notion of non-White inferiority to justify non-White exploitation.

Most of us, in this view, are racist to some degree. But those of us who take pride in enlightenment seldom show it openly; we sin by omission. We don't take part in racist acts of verbal or physical violence, but we seldom oppose the centuries-old racism embedded in society. In fact, we may not even realize it exists.

Sociologists call it "institutionalized racism" or "internal colonialism." This means that non-Whites and women relate to economic society in much the same way as conquered colonies did to their rulers in Europe. It means that most of the economic, social and political power is held by White males. White males have shaped our social structure, its clear divisions of labor, its hierarchy of control and its value system of laws and norms.

Discrimination is built into society through its norms. Norms, unstated or written, are the rules of the game. They tell people how they should feel and act: who should be hired, promoted, or housed, who should be educated and groomed for leadership.

For example: high school counsellors may steer Black students toward vocational rather than university courses, usually on the basis of aptitude tests, and according to Savannah Williams, Professor of Anthropology at Dalhousie University, the aptitude tests given Black students are often culturally biased. The lower scores push Blacks out of academic programs into general programs, so few get to university and into the upper social echelons.

In many centres the physical requirements for policemen are still based on White male characteristics and effectively screen out most South Asians. Property codes and lending practices often discriminate against non-Whites. White males set up anti-discrimination and equal opportunities programs and then by common consent let them stagnate. The power structure denies some minorities equality of opportunity and when they don't do as well as male Whites it's argued that they're less capable.

A recent year-long study in Toronto by Wilson Head, an Associate Professor of Social Work at York University who is here this weekend, reports that more than half the nearly-400 immigrants interviewed said they have personally experienced discrimination, and 34 per cent said they think it's worsening, not lessening, especially in relation to South Asians and West Indians. The jobless rate among young Blacks in downtown Toronto last fall was running as high as 75 per cent.

We have to try to change the system as well as attitudes. Since 1975 Toronto has had the Maloney Report, the Morand Report, the Ubale Report, the Carter Report and the Gerstein Report. Each has confirmed that Toronto minorities have grounds for complaint and each has offered recommendations for change.

But change has come grudgingly and too often only after racial violence. It's been accepted, most often, only under community pressure. Critics of the police suggest that even where there is progressive direction from the top, the rank-and-file often drags its feet in producing the desired change.

I realize that racism is not something new nor something that will soon disappear. But we can't afford to let things ride and hope for the best. The veneer of racial tolerance is too thin. We saw what happened in Britain in 1968 after two racist speeches by Enoch Powell. The latent racism lurking in many minds suddenly surfaced and the atmosphere of tolerance disappeared.

We need preventive policies and strategies. In 1980, after a study revealed a high jobless rate among youth in North York, my directorate provided funding to Metro Toronto to develop a series of pilot youth programs to combat racism. The programs are now being evaluated to see if and how they could be extended to other centres.

We need more projects of this sort: programs that get at the roots of racism. We need to know what other countries have done to reduce racial tensions, why certain programs work and others don't. We need more documentation on discrimination, on its subtle, covert and indirect mechanism.

I have therefore set up in my directorate a new research unit as many of you are already aware. It has begun to gather information on racial tension in Canada, gauge its extent, and analyze its causes, including the influence of economic factors. It will give us the guidance we need to shape new initiatives.

We're supplementing this fact-finding with an education program. We're developing resource kits for teachers, police, and community workers. We're helping community groups of all kinds fund seminars on race relations. We'll work with the media and other institutions to develop and publicize guidelines to guard against stereotyping and racism in reporting, advertising and business practices. And through multi-media advertising and other such communications we'll try to make the general public aware of how much society owes to the contribution of its cultural minorities.

Just over a week ago, on April 17th, the Constitution Act of Canada was proclaimed. For the first time in Canadian history, we have, in our Constitution, a Charter of Rights and Freedoms. I am glad that I was able to contribute to the entrenchment of these rights for all Canadians ... the rights of equality before and under the law, and the rights to equal protection and equal benefit of the law without discrimination, and, in particular, without discrimination based on race, national or ethnic origin, color or religion. I am also particularly proud of the explicit inclusion of the principle of Multiculturalism, its preservation and enhancement.

At the highest level of law, that of our country's Constitution, the proclamation is a promise for the future. It is up to all of us to ensure that the promise is fulfilled. Indeed, the Government of Canada is solemnly committed to act on this promise through all of its agencies.

In turn, this symposium is very much part of the process of improving the system. We have brought together here, representatives of all levels of government, the law formulation, law enforcement, human rights fields and organizations representing various ethnocultural groups to focus directly on race relations and the law. It is fitting that the initiatives for the symposium came from the urging of various ethnocultural minority communities. I am pleased to have played a role in bringing it about. And I would like to pay tribute to the enthusiasm and effort which many people have contributed to the planning of the symposium -- particularly the ad hoc committee. The subject matter has been divided into three important themes: Criminal Law and Race Relations; the Criminal Justice System and Race Relations; and, Non-Legal, Civil and Community Response.

I hope that these intensive few days will bring forward suggestions for improvements to Canadian criminal law and the criminal justice system, and it is to this end that the conference has been limited in numbers to facilitate a working environment.

Neither the federal government alone nor the Multiculturalism Program has the mandate or resources to effect all of the necessary changes to combat racial tension. But, I hope this will prove to be a meaningful development, in a challenging area. When we are finished this weekend, I am hoping for your support in following through. Where we can persuade, we will. Where we can act, we will.

For we have to act and act now; as the federal and Ontario governments are doing by ensuring that visible minorities are represented in their advertising, as British Columbia has done with its anti-racist legislation and Nova Scotia with its anti-racist program, as the Ontario Federation of Labour is doing with its anti-racist television campaign, the CNR with its Human Rights Task Force, and the RCMP and OPP with their recruiting of Native indians.

This is a multiracial nation. In the words of the Prime Minister, "There is no place in Canada for second class citizenship." We must act now to ensure that the laws of this country as enacted and applied, reflect the equality of all groups and individuals, irrespective of race.

Racism is one of the most dangerous threats to the freedom of individual choice. The greatest contribution that we can make is to ensure that the egalitarian principles upon which our new Constitution is based are translated into action including the law and the process. The challenge begins here and now.

A law that defends a principle but in consequence punishes innocent people, surely cannot be a fair and just law. For me that is the test to which our current laws must be put, and a crucial part of the work has to be done this weekend.

PLENARY SESSIONS

At the plenary session on the following morning, the first two major presentations to the symposium examined, respectively, the advantages and disadvantages of the criminal and administrative law approaches to race relations.

Winnipeg lawyer Israel Ludwig, chairperson of the Ad Hoc Advisory Group, addressed the delegates on the topic of his previously circulated paper, "Race Relations and the Law." The two major themes emerging from the presentation were the urgent need to act on the state of race relations in the country and the view of visible minorities that regarded willingness to pass new anti-racism laws as the measure of the government's sincerity and determination to solve the problem. Mr. Ludwig argued for strengthening the criminal laws against hate literature and hate organizations and for mandatory and more stringent penalties for race-related crimes. Additionally, he urged that affirmative action be undertaken to promote the hiring of visible minorities in the police, prison services and the judiciary. Although emphasizing law reform, the speaker also proposed other non-legal remedies such as multicultural education for officials in law-enforcement fields and as a compulsory part of Canadian schools' curricula; improved staffing for Human Rights Commissions; the creation of Mayors' Race Relations Committees, and the holding of regular community meetings on race relations.

He went on to suggest that the law which specifies statutory religious holidays such as Christmas day and Good Friday should be amended. Instead, employees should be granted a minimum number of holidays a year of their own choosing. These would be treated as statutory holidays. In this way holidays such as Yom Kippur, the Festival of Eid and others could be chosen as alternate statutory holidays by Canadians.

The second presentation under the conference's Theme I, The Criminal Law and Race Relations, was made by Prof. Walter Tarnopolsky, Director of the University of Ottawa's Human Rights Institute. Consistent with his paper Race and the Law which delegates had already received, Prof. Tarnopolsky emphasized more effective use of Human Rights Commissions rather than reliance on criminal law as the most productive means of combatting racism. A number of weaknesses were pointed out in adopting a strictly criminal law stand. These included the difficulties in successfully prosecuting hate propaganda crimes and the danger that an expanded Criminal Code could potentially be used to reduce freedom of expression, including that of minorities. Therefore, the speaker supported an approach which would foster greater public awareness of Human Rights Codes and Commissions and greater public willingness to make use of them. Proposals included making commissions independent of governments, where this was not already the case, and providing them with more staff and funding. He also recommended wider use of techniques of testing, monitoring and followup to make the investigation of offences and enforcement of the law more effective.

The keynote speaker at the late plenary session on the Friday, Mrs. Juanita Westmoreland-Traoré, Montreal lawyer and professor, addressed the topic "Race Relations and the Criminal Justice System." Mrs. Westmoreland-Traoré argued that the law, as enforced by the police, the courts and the corrections system, appeared to come down most heavily on visible minorities and other less powerful groups. Proposals for reform included the hiring of more minorities representatives as police and prison officers, community involvement in crime prevention, and a program of pre-trial diversion to permit offenders to make restitution and follow an educational program without going to trial.

The banquet on Friday evening was highlighted by a speech given by Ms. Usha Prashar, Executive Director of the Runnymede Trust, a private British foundation active in race relations issues. The speaker traced the history of anti-discrimination laws and the impact of the Commission for Racial Equality in the United Kingdom. The effectiveness of the laws and the commission has been severely limited, according to Ms. Prashar, by such factors as economic recession, scarce resources and lack of clear support from unions and private business. Nevertheless, the law was still perceived as a powerful weapon to combat racism, if only because it draws attention to abuses it cannot, for the moment, remedy.

The last day of the symposium featured a luncheon address by Edmonton Prof. Joya Sen on "Non-Legal, Civil or Community Responses," a post-luncheon address given by Prof. Wilson Head, President of the National Black Coalition of Canada, and a final plenary session in which the rapporteurs presented summaries of the workshop discussions. Recommendations were then adopted.

Prof. Sen opened with an appeal for resolutions demanding urgent action against what she termed a new level of racial hate and violence. Citing the insults, discrimination, exploitation, vandalism and physical assaults suffered by members of visible minority groups, she stated that the current government legislation and legal institutions were not sufficient protection. Prof. Sen drew particular attention to the immediate need for laws to eliminate racist organizations that heighten the humiliation, insecurity and anger of visible minorities and foster a climate which could result in racial violence.

Prof. Wilson Head, in his presentation, suggested that racism should be viewed in a broader framework within which more powerful groups use both the law and race to sustain their positions of power. In such a societal context, where poverty and inequality are presumed to be inherent, the victims cannot expect simply to be given the freedom to become fully functioning individuals. For them, the basic issue is how best to organize to fight for their freedom. This could only be accomplished through strengthened organizations which could develop strategies to combat racism and take advantage of opportunities to exert effective pressure. Prof. Head pointed out the need for visible minorities to seek allies among the churches, unions and other visible minority groups. As a followup to the symposium, Prof. Head called for another meeting of visible minority groups to devise anti-racism tactics appropriate to the described context.

The final plenary session then convened to hear summaries of workshops held during the symposium. Rapporteurs were Lewis Chan (Chinese Canadian National Council, Ottawa), Jamshed Mavalwala (Professor of Anthropology, Toronto), Jean Gammage (Jamaican Canadian Association, Toronto), and David Matas (Canadian Jewish Congress, Winnipeg). Following the reports, Chairperson Mr. Justice Jules Deschênes noted that the conference had not been conceived as one in which resolutions would be put to the vote, but rather as a means of conveying views and feelings to the proper authorities. A motion was then put forward to adopt all workshop recommendations. The meeting adopted that motion by a majority show-of-hands vote.

The symposium concluded with remarks from the Minister of State for Multiculturalism, the Honorable Jim Fleming, who called attention to the federal government's record in dealing with rights and equality, culminating in the entrenchment of the Charter of Rights and Freedoms. Referring to the national program to combat racism, Mr. Fleming expressed the hope that the symposium had opened some doors to frank discussion. Although recognizing that the subject of the law and race relations encompassed a broader field than Multiculturalism alone, the minister urged symposium delegates to follow through on the recommendations in their respective spheres of influence.

WORKSHOPS

Discussions in four simultaneous workshop sessions chaired by Mr. Art Lee (Executive Member for the B.C. Canadian Consultative Council on Multiculturalism), Ms. Rosanna Scotti (Municipality of Metro Toronto), Mr. Russell Juriansz (Canadian Human Rights Commission), and Hon. Claudius-Leger (Canadian Conference of Judges) ranged over more than 12 hours of the meeting. Guided by the three sub-themes of the symposium, the discussions, as reflected in the recommendations, covered a broad range of issues and alternatives for action. A range of positions was taken by participants. However, it was generally agreed by all that there was an urgent need to counteract the alarming rise of racist propaganda, discrimination and violence. Nevertheless, it was the approaches to solutions, i.e. reliance on strengthened criminal law or Human Rights Codes, that provoked the most vigorous debate.

Among the strongest proponents of the criminal law approach were the visible minority representatives who expressed the strong belief that the law conveys a moral statement on behalf of society; that though it legislates behavior, attitudes do, in time, follow behavior. One adherent to this view stated his conviction that the criminal law represents the highest form of power, the exercise of which was uniquely able to give the appropriate level of psychological satisfaction to the victim of racism.

The alternative viewpoint, as expressed by Prof. Tarnopolsky, emphasized the need to strengthen the role of the Human Rights Commission. This side of the debate argued that the Human Rights Codes and the commissions administering them could uphold the law against discrimination and concurrently, engage in an on-going process of public education to promote human rights and remove prejudice.

Over the course of the debate, a third approach gathered adherents. This approach rejected an either/or choice between the Criminal Code and Human Rights legislation in favor of a judicious blend of all available laws. As stated by one minority participant, "Fighting a monumental problem like racism is like fighting a war. You don't select or reject parties beforehand; you use whatever is best of the given moment."

Whether through administrative or criminal law, the common call was for action and, as stated earlier, this consensus was reflected in the fact that the final plenary session voted to adopt all workshop recommendations.

Recommendations

The following recommendations were not individually debated and approved by the symposium participants but were accepted "en bloc" as a reflection of the issues, concerns and resolutions discussed throughout the three days. It should not be assumed that each recommendation necessarily had the support of most symposium participants.

I The Law and Race Relations

A. International Convention

As a signatory to the International Convention on the Elimination of All Forms of Racial Discrimination, Canada should amend the law to offer some immediate protection against racism by:

1. making a declaration under Article 14. This Article allows for complaints by individuals or groups of individuals against a State Party which has made the requisite declaration in respect of alleged violations of the rights set out in the Convention. If Canada made such a declaration it would be the tenth country to do so and the complaint mechanism would become operative; and
2. living up to our commitment, under Article 4 to outlaw racist propaganda, incitement to moral discrimination, racist violence, and racist organizations.

B. Domestic Law

There was a recognition of the importance of legislation to combat racism. It was felt that existing legislation, whatever its nature, e.g., criminal, anti-discrimination, should be rigorously enforced. In particular, it was indicated that police forces should put more effort into combatting racially motivated crimes. In addition, it was felt that members of visible minorities, when they are victims of a crime, should be provided with information about facilities and institutions available to assist them.

It was pointed out, however, that there are limitations to what the law can achieve and that there is a danger that certain legal instruments designed to protect minorities could, in a backlash, also hurt them.

1. Criminal Code:

Some participants, while acknowledging the protection currently afforded by the Criminal Code, nevertheless felt it necessary to make the following suggestions:

a) amend hate propaganda provisions of the Code in order to:

   i) delete the word "wilful" from the phrase "wilful promotion of hatred" in sub section 281.2 (2); and

   ii) delete the requirement of the Attorney General's "fiat" in prosecuting "hate propaganda" offences;

b) amend the Code so as to:

   i) expressly prevent racist name calling;

   ii) ban import and export of hate literature; and

   iii) provide for increased penalty for racially motivated crimes.

2. Anti-discrimination legislation

While approving the role of federal and provincial Human Rights Commissions, participants felt that governments should clearly demonstrate support for the fight against racism by giving to the commissions the necessary resources to deal effectively with discrimination and by:

a) giving primacy to Human Rights Acts; and

b) giving independence to Human Rights Commissions from government.

C. Affirmative Action and Other Employment Programs

Governments should support and encourage the adoption of affirmative action programs and in particular adopt a contract compliance scheme for firms doing business with them. In this respect, the symposium put particular emphasis on the following measures:

- Affirmative action programs to increase participation of visible minorities in government, on the bench, on boards, on commissions, with particular emphasis on the police.

- The primary responsibility of organizations where visible minorities are underrepresented to take steps to remedy this situation, if necessary by affirmative action. This is particularly the case with law enforcement organizations such as the police, the customs and immigration services, the penitentiary service, etc.

- The obligation of employers to ensure that employees belonging to visible minorities are treated with fairness and given employment opportunities, if necessary by affirmative action.
- The need for governments to give to Human Rights Commissions the necessary support so that they may effectively monitor contract compliance.

II Public Education and the Impact on Race Relations

Currently one of the results of the latent and overt racism in Canada is a distrust on the part of visible minorities regarding the legal apparatus. Police, lawyers, judges and correctional staff are felt to be antagonistic towards visible minorities. Visible minority groups are demanding the right to complain about the activities of law enforcement officers to independent review boards. They asked for:

A. Modification of school curricula and increased funding for public education in schools to promote, at an early age, a better understanding of Canada's multicultural society.

B. Governments to provide funding to sensitize workers and professionals to Canada's multicultural and multiracial character; in particular, emphasis was put on educational programs designed to promote understanding of Canada's multicultural society by those responsible for administering this country's legal system, i.e. the police, lawyers, judges, and correctional staff, etc.

C. Governments, directly by advertising campaign and indirectly by fostering a better understanding of visible minorities in the media, to promote racial harmony and reduce tension through better understanding of Canada's multicultural and multiracial nature.

III Followup

The symposium urged that action on its recommendations be taken before the end of 1983 and that soon afterward another symposium be convened to re-examine the situation.

The symposium examined various means to ascertain the extent and the implications of racism in Canada and to determine what can be done to remedy the situation. It was recommended that one or more of the following measures be adopted:

- that an interim committee with more than consultative powers be struck to work with the minister to implement the symposium recommendations;

- that working groups be assigned to review the race relations components of criminal law, civil law and administrative law to assess their effectiveness in combatting racism. These reports would be tabled at the second symposium. These groups would also forward their final reports to relevant federal and provincial government departments;
- that a task force be set up to give national focus on racism and evaluate ways and means of combatting racism;
- that a parliamentary committee be struck to hold public hearings on the race relations situation in Canada and to make specific recommendations to combat racism; and
- that a royal commission on race relations be appointed to examine the whole problem of racism in Canada and to give the subject a proper national focus.

Appendices

EXECUTIVE SUMMARY OF GALLUP POLL

On March 5, 1982, Multiculturalism Minister Hon. Jim Fleming released figures from a Gallup Poll on racial attitudes in Canada which he said reflected both reasons for concern and reasons to be optimistic.

Mr. Fleming stressed that the poll, commissioned by the Multiculturalism Directorate, is a complex document that will require considerable time to analyze.

He said he planned to take a long, thoughtful look at how to deal with its conflicting signals and would not release the full data until the necessary studies had been completed.

But the minister said preliminary analysis of the findings confirmed what visible minority leaders had been advising him: that prejudice and racism exist in Canadian society.

Mr. Fleming said he had initiated the poll for a number of reasons: as a response to the concerns by minority groups, because of an apparent increase in racially motivated incidents last year, and heightened media coverage of such incidents.

He felt it necessary to try to determine the level of support that exists for sentiments expressed by groups such as the Ku Klux Klan, and as well the widely held fear that racism increases in difficult economic times.

The minister said the data uncovered will be employed in the application of programs in his Multiculturalism Directorate. It will also be made available to other federal departments, other levels of government, human rights commissions, other concerned individuals, as well as voluntary sector agencies working to overcome elements of racism in Canadian society.

Mr. Fleming's directorate will use the data to focus its programs, either carrying on further research as a result of attitudes identified, or develop new programs to overcome misperceptions.

Mr. Fleming cautioned that while the Gallup figures appear to show some disturbing support for racist attitudes, they also provide encouraging evidence of tolerance.

He noted that the results of two questions, taken in juxtaposition, tend to offset each other.

He cited Question 11, where 71 per cent of the 2,094 individuals polled disagreed with the proposition "I would cut off all non-White immigration to Canada." Only 12 per cent agreed. Yet Question 6 produced 58 per cent agreement with the statement, "I would limit non-White immigration and those who were let in would have to prove themselves before they were entitled to government-supported services."

In releasing the preliminary data, the minister stressed it is important the figures be contemplated in a context of balance.

The poll was designed with 13 questions, worded in such a manner as to elicit response that would reflect the attitude of respondents on general as well as specific issues.

Six of the 13 were written in a positive manner, and seven in a negative manner. Another part of the methodology was to probe for attitudes to the same issue -- i.e., immigration -- in differently worded questions appearing randomly throughout the questionnaire.

Following are the results of the 13 questions on Race Relations in a Gallup Poll commissioned by Multiculturalism Minister Hon. Jim Fleming. Over 2,000 adults were personally interviewed in their homes across Canada during the first two weeks of November 1981.

The following table is an extremely simplified, but nevertheless accurate summary of the polling.

The figures do not total 100 per cent because 5-6 per cent of respondents replied "do not know" to each question.

	General Agreement %	General Disagreement %	Neither Agree nor Disagree %
1. Riots and violence increase when non-whites are let into a country.	19	64	13
2. Non-white immigration has made Canada a culturally richer country.	67	21	8
3. Racial mixing violates the teaching of the Bible.	14	70	11
4. I would maintain a fairly open immigration policy with few limitations.	65	16	13
5. I would support organizations that worked towards preserving Canada for whites only.	31	50	13
6. I would limit non-white immigration and those who were let in would have to prove themselves before they were entitled to government-supported services.	58	23	14
7. A culturally diverse country is a strong country.	56	19	19
8. I would limit immigration in general, but not base it on racial origin.	43	37	15
9. The people of this country are looking less and less Canadian.	12	74	9
10. I would support local organizations that worked toward multiculturalism and harmony among races.	34	43	19
11. I would cut off all non-white immigration to Canada.	12	71	10
12. We are all immigrants in one way or another.	49	28	18
13. I don't mind non-whites but I'd rather see them back in their own country.	28	52	16

Race and the Law

by

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> "The legislation (banning hate literature) could be dangerous in either one of two opposite ways. On the one hand, it could place too much power in the hands of an Attorney-General who could be determined to suppress a vociferous and unpopular minority group. On the other hand, because of the defences which are available under the *Criminal Code* (and in order to protect freedom of expression they are necessary), acquittals could result which could diminish respect for the *Criminal Code*.
>
> "Positive measures, such as indicated above (action by human rights commissions and public education), rather than the new *Criminal Code* sections on genocide and group defamation would promote the attainment of an egalitarian society more effectively, without risking undue restriction of freedom of expression."

Anti-Discrimination Legislation -- Criminal Law or Human Rights Codes?

Egalitarian civil liberties or human rights are somewhat different from the other civil liberties, except some of the economic ones, in that they require positive legislative support for their existence. The absence of discriminatory laws and administrative practices are not in themselves sufficient to ensure the protection and promotion of human rights, because discrimination may be practiced in so many of the daily activities of people. Without legislation forbidding it, the private individual, group, trade union or corporation, may discriminate in employment, in public service industries, in accommodation, even in the sale of property, on the ground of the applicant's or consumer's race, color, creed, religion, age or sex. A constitutional safeguard against discriminatory legislation is not enough. As Dean W.F. Bowker stated in an address to the Canadian Bar Association in 1953:

> To borrow the metaphor that an American writer has used, the constitutional enactment is a shield, but the victim of discrimination needs a sword as well. The sword is legislation that forbids discrimination.

It is possible to trace the first anti-discrimination legislation to pre-Confederation times. As early as 1793, the first legislative assembly of the Province of Upper Canada enacted: "An Act to prevent the further introduction of Slaves and to limit the term of contracts for Servitude within this Province." Although this statute affirmed the ownership of slaves then held, it did provide that the children of female slaves, upon reaching the age of 25 years, would be set free. In 1833 this legislation was superseded by the Imperial legislation known as the Emancipation Act, which abolished slavery in all parts of the British Empire. However, for almost a century after, that the trend at the federal, provincial and municipal levels was to enact discriminatory legislation.

This trend started to be reversed in the 1930s, when a number of specific provisions to specific statutes forbade discrimination. Thus, in 1932, the legislature of Ontario added a provision to The Insurance Act which provided that any insurer who discriminated unfairly between risks in Ontario "because of the race or religion of the insured," was guilty of an offence. The year following, a B.C. Unemployment Relief Act ratified a prior agreement with the federal government to pay part of the cost of placing families on land for farming, provided that "the selection of families shall be made without discrimination by reason of political affiliation, race, or religious views." The next year, 1934, the Province of Manitoba passed an amendment to its Libel Act, adding s.13A providing that "the publication of a libel against a race or creed likely to expose persons belonging to a race or professing the creed to hatred, contempt or ridicule, and tending to raise unrest or disorder among the people" entitled the person belonging to the race or creed to sue for an injunction.

It was not until near the end of World War II that modern human rights legislation started to spread. In 1945 the British Columbia Social Assistance Act provided that "in the administration of social assistance there shall be no discrimination based on race, colour, creed or political affiliations." The year before, the Province of Ontario enacted the Racial Discrimination Act 1944. This statute prohibited the publication or displaying of signs, symbols, or other representations expressing racial or religious discrimination. The Ontario Act was brief and limited to one specific purpose, and it was not until 1947 that the first detailed statute was enacted by the Province of Saskatchewan as the Saskatchewan Bill of Rights Act 1947.

The Saskatchewan Bill of Rights did not deal only with human rights, but with the fundamental freedoms of speech, press, assembly, religion and association. It did, however, also prohibit discrimination with respect to accommodation, employment, occupation, land transactions, education, businesses and enterprises. Moreover, it purported to bind the Crown and every servant and agent of the Crown. The enforcement of this legislation was through penal sanctions, i.e., the imposition of fines, perhaps injunction proceedings, and imprisonment. No provision was made for a special government agency specifically charged with the administration and enforcement of the Act. It was left to the regular enforcement machinery of police and courts as would apply with respect to any other provincial statute which includes prohibitory provisions, such as the liquor or vehicules Acts.

Both the Saskatchewan Bill of Rights and the Ontario Racial Discrimination Act were quasi-criminal statutes in that certain practices were declared illegal and sanctions were set out. The experience in the United States in the twentieth century and in Canada since World War II, has been that this form of protection, although better than none, is subject to a number of weaknesses. There is reluctance on the part of the victim of discrimination to initiate the criminal action. There are all the difficulties of proving the offence beyond a reasonable doubt, and it is extremely difficult to prove that a person has not been denied access for some reason other than a discriminatory one. There is reluctance on the part of the judiciary to convict, probably based upon a feeling that a discriminatory act is not really in the nature of a criminal act. Without extensive publicity and promotion, many people are unaware of the fact that such human rights legislation exists. Members of minority groups who have known discrimination in the past tend to be somewhat skeptical as to whether the legislation is anything more than a sop to the conscience of the majority. Finally, the sanction in the form of a fine does not really help the person discriminated against in obtaining a job or home or service in a restaurant.

To overcome the weaknesses of quasi-criminal legislation, fair accommodation and fair employment practices Acts were enacted by most provinces during the 1950s and early 1960s. These new types of human rights provisions were copied from the legislative scheme first introduced on this continent in the State of New York in 1945. The New York legislation was an adaptation of the methods and procedures that proved effective in labour relations. Fair employment and fair accommodation practices Acts provided for assessments of complaints, for investigation and conciliation, for the setting up of commissions or boards of inquiry if conciliation is unsuccessful, and only as a last resort, for prosecution and the application of sanctions. Nevertheless, this legislation continued to place the whole emphasis of promoting human rights upon the individual who had suffered most, and who was therefore in the least advantageous position to help himself. It placed the administrative machinery of the state at the disposal of the victim of discrimination, but it approached the whole problem as if it was solely his problem and his responsibility. The result was that very few complaints were made, and very little enforcement was achieved.

In 1962 Ontario took the next step in the strengthening of its human rights legislation by consolidating all the statutes into the Ontario Human Rights Code, to be administered by the Ontario Human Rights Commission, which had been established a year earlier. In the years that followed, by 1975, every provincial legislature enacted a comprehensive human rights code, providing for a Human Rights Commission charged with its administration. The Parliament of Canada followed suit in 1977.

There are two important features which advance the effectiveness of Human Rights Codes over such statutes as the Fair Accommodation and Fair Employment Practices Acts. In the first place, the latter are directed towards discrimination in one area, and do not approach the issues as being part of an overall problem. The Human Rights Codes, on the other hand, prohibit discriminatory practices in a number of fields - employment, public accommodation, commercial and dwelling units, advertising and so on. Second, under the earlier legislation there was no specific person or group of persons, other than perhaps some officer in the department of the responsible minister, charged with education, administration, promotion and enforcement of the human rights legislation.

The consolidation of human rights legislation into a code to be enforced administratively by commissions ensures community vindication of the person discriminated against. This is justified as being as important to the community itself because of the broad educational value of equal treatment, as it is to the victim of discrimination. Without active community involvement, the person who suffers from discrimination may lack knowledge of the purpose and scope of human rights legislation, or may fear that the costs of vindication would be too great in terms of money or embarrassment. Or he may fear that simple proclamation of human rights is merely a soothing of the conscience of the majority, without intending to produce tangible results. The objects and purposes of a Human Rights Commission administering a Human Rights Code have been cogently summed up by Dr. Daniel Hill, formerly director, and then chairman, of the Ontario Human Rights Commission:

> Modern day human rights legislation is predicated on the theory that the actions of prejudiced people and their attitudes can be changed and influenced by the process of re-education, discussion, and the presentation of dispassionate socio-scientific materials that are used to challenge popular myths and stereotypes about people...Human Rights legislation on this continent is the skilful blending of educational and legal techniques in the pursuit of social justice.

Hate Literature and the Law

(a) The Criminal Law

In the 1960s the federal government was faced with the necessity of considering legislation prohibiting advocacy of genocide as well as group defamation because it had signed the Convention on the Prevention and Punishment of the Crime of Genocide, as well as the Convention on the Elimination of all Forms of Racial Discrimination. In February, 1964, two private members Bills were introduced on the subject, but they were not voted on but were referred to the Standing Committee on External Affairs. In January, 1965, the Minister of Justice appointed a Special Committee on Hate Propaganda, under the able chairmanship of Dean (as he then was) Maxwell Cohen. The report was presented before the end of 1965, tabled in the House of Commons on April 4, 1966, and then a Bill based on the recommendations was introduced in the Senate on November 7, 1966. After much debate, some postponement, and several changes, the amended Bill was passed as ss. 281.1, 281.2 and 281.3 of the Criminal Code.

Section 281.1 makes advocacy or promotion of genocide an indictable offense. Section 281.2(1) provides that "everyone who, by communicating statements in a public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace" is guilty of an offence. Section 281.2(2) provides that "everyone who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group," is guilty of an offense.

Section 281.2(1) raises the question of which evil it is that is sought to be remedied. Is it the threat to, or disturbance of public order? Or is it the defamation of identifiable groups? If it is the former, does it matter how that peace is disturbed, except to the extent of determining responsibility? It should be equally undesirable whether the root cause is an incitement to hatred of identifiable groups, or an incitement to oppose constituted authority, or an incitement by opposing political groups against a group demonstrating for a political purpose. If there is a breach of the peace, or a threat thereto, is one form of incitement to violence much different from any other form of incitement? If it is the defamation of identifiable groups which is the main object of the prohibition, is this not covered in s.281.2(2) which deals with groups defamation?

A somewhat more difficult problem that arises here, is where to lay the responsibility for any disorders. Does one blame picketers who assault a strike breaker, or does one condemn the strike breaker as a provocateur? Who should be charged with disturbing the peace - a group of youths who attack an individual, or the individual who taunted and provoked them into violence? In the case of a public meeting, is the speaker to be charged, or those who react with violence to what he says?

However, this approach must be used cautiously, otherwise it will be the public which determines which speaker may be permitted to speak and which speaker should be silenced. Certainly there can be no sympathy for anyone who uses threatening, abusive, or insulting language in public, especially if he intends to incite to hatred or contempt against any identifiable group. But on the other hand, Section 281.2(1) does not speak of "wilful" incitement. There is no defence of truth, reasonable belief in truth, or good faith, all of which are defences against a charge of group defamation. In these circumstances, do we necessarily condone those who come deliberately to disrupt the meeting, and thereby give wide attention to insults and abuse which thus far are not believed by anybody but an obviously disturbed few? It would seem that a medical remedy is more appropriate in these cases than a legal one.

It is s.281.2(2) which points up most vividly the problems faced in attempting to prohibit group defamation in the Criminal Code. It is the difficulties associated with this sort of a provision which seems to have been an important factor in the reluctance of many American states, despite their greater problems with such matters, to enact group defamation legislation.

The offence of group defamation is subject to a number of important limitations. In the first place, the prosecution would have to show that any group defamation was made "wilfully." Second, it would be necessary to show that the statements were communicated "other than in private conversation." How loud does one have to speak before a private conversation ceases to be "private"? In what circumstances, in the possible hearing of what number of people, does a private conversation cease to be "private"? Third, an accused would have a valid defence if he could prove that the statements he used were true. Fourth, since it is a defence in good faith to express or to attempt to establish an opinion upon a religious subject, are not many such opinions which are highly critical of others, and even though wrong, not held "in good faith"? Fifth, since it is a defence to show that on reasonable grounds a person believed certain statements to be true, the discussion of which is for the public benefit, who is to decide what is for the public benefit? Clearly it must be the judge. What kind of evidence could one adduce to show public benefit, or lack of it?

The defence of truth perhaps illustrates the dilemma best of all. If Criminal Code s.281.2 had placed the onus to show that a statement was untrue upon the prosecution, a conviction would be almost impossible to obtain. On the other hand, since the section does place the onus upon the accused, what sort of proof would suffice? Whereas in defamation of an individual it is relatively easy to ascertain the veracity of a statement, it is not so easy when the statement concerns a group. Suppose that a person charges that a certain ethnic group in Canada has a high rate of illegitimate births, harbors criminals, avoids paying taxes, and so the deportation of those members who have not yet obtained Canadian citizenship is urged. Would the person making these allegations be one who "wilfully promoted hatred or contempt" against the group? Would he be permitted to prove the "truth" of his statement? If so, what would suffice? Proof that 10 members of the group fit the description? That a substantial minority of the group fit that description? Or proof that all members of the group fit the description? If the accused is not permitted to try to prove the "truth" of his statement, then why should the defence be provided? On the other hand, if the defence of "truth" is not available, one would have to be very circumspect about statements with respect to any identifiable group, unless such statements are laudatory or at least non-committal.

The danger inherent in these new Criminal Code provisions are even more evident in s.281.3 which provides for warrants of seizure to be issued by a judge "who is satisfied by information upon oath that there are reasonable grounds for believing that any publication, copies of which are kept for sale or distribution in premises within the jurisdiction of the Court," is hate propaganda. "Hate propaganda" is defined as "any writing, sign or visible representation that advocates or promotes genocide or the communication of which by any person would constitute an offence under s.281.2." Provision is made in s.281.3(3) for the owner and author of the matter seized to oppose the making of an order for forfeiture.
Section 281.3(4) provides that "if the Court is satisfied that the publication is hate propaganda" it shall make order for forfeiture.

Booksellers and publishers beware! Whose "good faith" would have to be proved, that of the original author, or that of the bookseller, or that of a professor or teacher who assigns the book to his class? Would it suffice for a university bookstore to have the professor who assigned a text prove that he "in good faith" intended to use the book to show its immorality so that he would "point out, for the purpose of removal, matters producing or tending to produce feelings of hatred towards an identifiable group in Canada?" Based upon recent experience in the United States, and in more recent years in Canada, one can expect some pretty angry statements by minority groups to be communicated in books, journals, and pamphlets. Is it impossible to imagine that there could be judges who could be "satisfied" that some literature written by Native groups about White people and the extinction of the Beothuk Indians in Newfoundland, or the taking of lands without even signing treaties, or keeping Indians on reserves, would amount to a wilful promotion of hatred against the white population?

It appears evident that Section 281.3 provides censorship powers in the hands of our Attorneys-General. In the 1940s and 1950s the Jehovah's Witnesses found that such powers and such responsibility could be extremely dangerous. Could it be doubted that the literature which was involved in the case of Boucher v. The King could be classed as "hate propaganda"?

Let there be no misunderstanding about the arguments raised above. It is not argued here that hate propaganda should be ignored. Moreover, one cannot deny that the Criminal Code has an educative function, and that the enactment of ss. 281.1, 281.2 and 281.3 might have had some effect on the lessening of hate propaganda in the last several years. Rather it is argued that the legislation could be dangerous in either one of two opposite ways. On the one hand, it could place too much power in the hands of an Attorney-General who could be determined to suppress a vociferous and unpopular minority group. On the other hand, because of the defences which are available under the Criminal Code (and in order to protect freedom of expression they are necessary), acquittals could result which could diminish respect for the Criminal Code. Besides, prosecution under the alternative sections suggested here should have been tried first.

These new Criminal Code sections can soothe our mutual consciences while ignoring more fundamental problems. The important impediments to the attainment of an egalitarian society are not the vulgar, disgusting tirades of bigots or demented cranks. Rather it is the overt forms of discrimination that hurt and maim. A member of a minority group who tries to achieve a better life does not have to fear the hatred of a few sick souls (and the Cohen Committee found that the number involved was not large nor politically powerful), as much as the insult of being denied a home, a job, or food, in a particular establishment, because of his race, color, religion or ethnic origin. Aspiring members of minority groups in Canada are not denied equality of access by members of the impotent Canadian Nazi Party as much as they are by lessors of housing accommodation or the urbane and powerful members of social clubs, country clubs, hunting clubs and secret lodges. It is action by human rights commissions administering human rights codes, which is important in promoting human rights. Moreover, provisions in the Criminal Code which lie dormant cannot be as important as financing of research which is required into group and racial prejudice - its causes, its manifestations, its effects, and its antidotes. Revision of curricula and the teaching of human rights in the classrooms are required in order to educate a new breed of Canadian who would not circulate hate propaganda or condone it.

If we believe, as Mr. Justice Rand stated in the Boucher case, that "freedom in thought and speech and disagreement in ideas and beliefs, on every conceivable subject, are of the essence of our life," then we should also believe that "our concept of free society" will be able to withstand these differences and be the stronger for rejecting them rationally, rather than suppressing them arbitrarily, and perhaps ineffectually. Positive measures, such as indicated above, rather than the new Criminal Code sections on genocide and group defamation would promote the attainment of an egalitarian society more effectively, without risking undue restriction of freedom of expression.

(b) Human Rights Law

Every jurisdiction in Canada has a provision prohibiting discriminatory notices, signs, symbols, advertisements and other messages. Apart from s.13 of the Canadian Human Rights Act, which is unique and which will be dealt with separately later, all the other provisions can be divided into two versions. Within one are all the jurisdictions except Manitoba and Saskatchewan. In the version the prohibition is with respect to anything "indicating discrimination or any intention to discriminate." Thus, for example, s.12(1) of the Nova Scotia Human Rights Act provides:

> 12 (1) No person shall publish, display or broadcast, or permit to be published, displayed or broadcast on lands or premises, or in a newspaper or through a radio or television broadcasting station or by means of any other medium, any notice, sign, symbol, implement or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose.

On the other hand, the Acts of Manitoba and Saskatchewan are much broader in that they cover not just indications of discriminatory intent, but hate messages as well. Since the Saskatchewan provision is the more recent and extensive, reference will be made to it:

> 14 (1) No person shall publish or display, or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting service or in any printed matter or publication or by means of any other medium that he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restricting enjoyment by any person or class of persons of any right to which he is or they are entitled under the law, or which exposes, or tends to expose, to hatred, ridicules, belittles, or otherwise affronts the dignity of any person, any class of persons or a group of persons because of his or their race, creed, religion, colour, sex, marital status, physical disability, age, nationality, ancestry or place of origin.

Finally, all jurisdictions, except Canada, Quebec and Yukon, have a "free speech" or "free expression of opinion" exemption. Thus, section 14(2) of the Saskatchewan Code provides: "Nothing in subsection (1) restricts the right to freedom of speech under the law upon any subject," while the Nova Scotia Code provides s.12(2): "Nothing in this section shall be deemed to interfere with the free expression of opinion upon any subject in speech or in writing." Although this exemption has been included from the beginning, since the Ontario Racial Discrimination Act of 1944, it is argued later in this paper that this exemption merely exhibits excessive caution and is probably superfluous.

(i) Adjudication Concerning the Prohibition

There have been only four Canadian human rights cases dealing with this provision. Of these four, only one from Saskatchewan and the other from Nova Scotia will be discussed as being relevant to our topic.

The Saskatchewan decision is Singer v. Iwasyk and Pennywise Foods Limited, in which the Commission rendered its decision in November 1976. On land owned by the respondents, the respondent Iwasyk operated a drive-in restaurant called "Sambo's Pepperpot," which displayed a sign showing a caricature of a small person with black or brown skin colour, wearing a chef's hat and a grass skirt and bearing the words "Sambo's Pepperpot." Advertisements of the restaurant, including matchbooks and automobile-stickers, depicted the same caricature in association with the word "Jez Aint None Better." The complainant alleged that these signs and symbols were in contravention of section 4(1) of the Fair Accommodation Practices Act, which preceded the 1979 Code. At the hearing, evidence received from an anthropologist, accepted as an expert witness on racial stereotyping, as well as from one Indian woman and the non-Indian husband of another, both of whom had seen the sign, all led to the conclusion that the caricature was entirely negative in its connotations, not just with respect to blacks, but other non-white minority groups as well -- they would feel demeaned and belittled by it.

Since the evidence did not indicate that the respondents intended to discriminate with respect to service in the restaurant, the question was whether the sign "indicated discrimination." The Commission dealt with that issue by posing the following question (p. 4):

> Would the representation of Blacks as childish, funny, emasculated, inferior, as described by the witnesses, indicate discrimination?

and answering it in the following way:

> It seems to us that to ask the question is to answer it. If a stereotypical image of a certain class of persons as incompetent, childish and funny is allowed to be displayed, the opportunities of members of the class for responsible jobs and to obtain rights on an equal footing with the majority class grouping are endangered.
>
> The effect of such a caricature is to reinforce prejudice against Blacks and as a consequence to prolong the

> existence of hangovers of prejudice against non-white minority groups in Canada. It also promotes a negative image about Blacks. In the above sense the representation in question indicates discrimination against Blacks, and falls within the meaning of Section 4(1)...

In further amplification of the expression "indicating discrimination," the commission suggested (pp. 5-6):

> The separation in Section 4(1) between displays or representations (a) indicating discrimination and (b) indicating an intention to discriminate, must be taken into account in assigning sensible meanings to (a) and (b) respectively. A representation indicating an intention to discriminate would be one such as "Blacks Will Not Be Served Here," or "No Blacks Allowed" or "Whites Only." Such representations make it clear that the property owner, landlord, restaurateur, or whatever, who displayed the words, intended to discriminate against Blacks and warned Blacks of this intention.
>
> On the other hand, a poster, drawing, cartoon or other similar representation, in words or otherwise, depicting Blacks as inferior to White persons, would disclose a discriminatory predilection, belief or attitude, and thereby indicate discrimination against Blacks but would not necessarily indicate an intention to discriminate.

Therefore, the commission concluded, the representation involved here "offends and affronts the dignity and the right not to be so offended, of minority persons, especially of black or brown persons, as individuals and as a class" (p. 7). As a result, the commission asserted, although the respondents "did not intend to discriminate, they did display a sign and published representations which indicated discrimination against black or brown persons as a class." The respondents were, therefore, ordered to remove the caricature from the sign on the restaurant and to cease and desist from publishing or diplaying the name, symbol, or caricature of a "Sambo."

The other case to be considered is that of a Nova Scotia Board of Inquiry in Rashed and Black United Front v. Bramhill. It would appear that the respondent wanted to capitalize financially upon certain statements made in the Nova Scotia House of Assembly by the Attorney General to the effect that "there are too many people in Cape Breton like that, with a big mouth and no mind," by ordering 5,000 buttons on which was depicted a picture of a Black female singer, surrounded by the words "I'm a Big-Mouth Cape Bretoner - so kiss me." Although the evidence seemed to indicate that the respondent meant no insult to members of the Black minority, or any other minority, the evidence was clear that the reaction to the button amongst the Black community "was one of anger, shock, disgust, outrage, and indignation." An expert witness, Dr. Daniel Hill, former chairman and director of the Ontario Human Rights Commission, expressed the view that the button had the effect of promoting both latent and active discrimination, having an effect upon employment opportunities of the Black community.

After discussing definitions of discrimination, Chairman Charles declared:

> The button, in combination with the card, [which quoted the Attorney General] conveys the idea that Black persons in general or female Black persons in particular, are loud and stupid. The button thus emphasized a distinguishing characteristic of a negative type. Taken in the historical context of the Black as a racial minority, it goes beyond bad taste and mere offensiveness. Such a statement might, for example, very well tend to activate latent prejudice and indirectly affect employment opportunities for Blacks.

The chairman went on to hold that "an intention to discriminate is not necessary in order for there to be a violation of the Human Rights Legislation." The chairman went on then to deal with the defence of "freedom of expression," which is dealt with later.

In summarizing what little authority there is, in the light of the plain meaning of the terms used, one can conclude that this provision has a broad coverage, including not just a written notice or sign, but images, symbols and other depictions as well. In addition, the prohibition applies whether the respondent does or does not intend the negative implication, and even where he is naïvely ignorant of such implication. In addition, it does not appear to matter whether the particular provision covers not just discrimination under the human rights laws, but group hatred or ridicule as well, as under the laws of Saskatchewan and Manitoba, or just the former, as in the case of all other jurisdictions. This is obvious if one considers that the Saskatchewan case, which was based upon an earlier Act, and the Nova Scotia case, were both concerned with the narrower provision. Moreover, at least in those jurisdictions where there is a specific reference to television or radio broadcasting and, probably even in those where there is not, there is no reason why the provision should not apply to broadcasting as well.

(ii) The "Free Speech" or "Free Expression" Exemption

There are really three interrelated questions that arise with respect to this exemption: (1) Is the provision itself beyond the jurisdiction of the provinces? (2) Is it beyond the jurisdiction of the provinces to the extent that it applies to radio, television and cable broadcasting? (3) If the provision is not in whole or in part beyond the jurisdiction of the provinces, what is the effect of the "free speech" or "free expression" exemption?

On this point Chairman Charles, in the Bramhill case, after having decided that the button of concern in that case did contravene the signs and symbols provision, went on to consider the defence that this provision was beyond the competence of the provincial legislature because it affected freedom of speech. He made reference to several Supreme Court of Canada decisions. In the light of these authorities, his conclusion was:

> Section 12(2) should not be read as imposing an absolute limit upon Section 12(1) but, rather, in the context of a right of expression that is not absolute and which must, in some circumstances, give way or be curtailed in order to make other rights effective. It could be interpreted as a declaration that the Provincial Legislature did not intend, by virtue of Section 12(1) to go beyond the bounds of what is necessary in order to prevent discrimination by signs, symbols, etc.

In considering the constitutional validity of the provincial prohibitions against discriminatory messages, insofar as a message relates to employment, provision of goods, services, facilities or public accommodation, or the selling or leasing of real property, whether for private or commercial purposes, legislature jurisdiction with respect to the message will be determined by the legislature jurisdiction with respect to the person, thing or activity. Furthermore, it would appear that as long as the provincial prohibition applies to the message, the medium by which it is transmitted will not alter jurisdiction.

If one were to consider next what the jurisdiction would be with respect to the medium, one would have to start with the proposition that provincial legislation directly in relation to broadcasting would be invalid. Further, federal control over the intellectual content of broadcasting was specifically affirmed by the Ontario Court of Appeal in Re CFRB and Attorney General for Canada, and the Supreme Court of Canada held that it is Parliament which has jurisdiction over cable television systems and that this jurisdiction includes the right to regulate advertising content. On the other hand, it is quite clear that, because of provincial jurisdiction over "Property and Civil Rights," the provinces can prohibit the posting or displaying of notices, signs, symbols and other forms of representation, at least to the extent that such prohibition does not interfere with a federal matter, such as the posting of election signs during a federal election.

The question that remains open is whether there are any further limitations on provincial jurisdiction apart from those with respect to broadcasting and direct interference with a federal work, undertaking, property or activity. In other words, can the provinces prohibit the communication of ideas and opinions not directly related to prohibited acts of discrimination or to the incitement or advocacy of such acts? At the moment, this would only appear to concern the Acts of Saskatchewan and Manitoba. The provision in all the other provinces must be valid on the ground that prohibition of that type of message is a necessary part of human rights legislation and therefore cannot be considered an infringement of freedom of speech or expression. As Chairman Charles in the Bramhill case said, "in particular cases, the right of free speech may have to give way to other human rights, such as the right not to be discriminated against." Nevertheless, although the provinces have jurisdiction to regulate Property and Civil Rights, prohibition of the dissemination of ideas, particularly on political and religious subjects, is part of the criminal law power of Parliament. Therefore, with respect to "hate literature" and group defamation, unless there is evidence to show that the effects of such messages would be to enhance discrimination against the target groups in ways or by means prohibited by provincial human rights legislation, the jurisdiction is that of Parliament. In fact, of course, Parliament has prohibited advocacy of genocide, dissemination of "hate literature" and public defamation of groups, in the Criminal Code, sections 281.1, 281.2 and 281.3.

Thus, one has to conclude that although these prohibitions of discriminatory messages are *intra vires* the provinces, the exemption provisions are probably superfluous. On the one hand, whether these messages indicate discrimination or an intention to discriminate, prohibition of them is a valid restriction on speech and expression and therefore cannot be said to infringe either of those freedoms. On the other hand, if the prohibition were to touch the essence of free speech, free press or free expression, in the sense that it is not related to discrimination and those matters covered by provincial Human Rights Acts, then it is *ultra vires* the provincial legislatures. In either case, the exemption provision is superfluous, unless it is intended merely as an indication to Human Rights Commissions that it is necessary to balance, on the one hand, the importance and the seriousness of the communication and, on the other hand, its effect on discrimination against those groups who are protected by the legislation.

Section 13 of The Canadian Human Rights Act

Section 13 of The Canadian Human Rights Act is unique in Canadia anti-discrimination legislation. It provides:

> 13 (1) It is a discriminatory practice for a person or a group of persons acting in concert to communicate telephonically or to cause to be so communicated, repeatedly, in whole or in part by means of the facili-

> ties of a telecommunication undertaking within the legislative authority of Parliament, any matter that is likely to expose a person or persons to hatred or contempt by reason of the fact that that person or those persons are identifiable on the basis of a prohibited ground of discrimination.
>
> (2) Subsection (1) does not apply in respect of any matter that is communicated in whole or in part by means of the facilities of a broadcasting undertaking.
>
> (3) For the purposes of this section, no owner or operator of a telecommunication undertaking communicates or causes to be communicated any matter described in subsection (1) by reason only that the facilities of a telecommunication undertaking owned or operated by that person are used by other persons for the transmission of such matter.

A number of points should be noted from the wording of the Act itself. Section 13 applies to telephonic messages, not others, such as those transmitted by broadcasting. Second, it refers to repeated communications, not a single one. Third, the telephonic facilities are those of a "telecommunications undertaking under the legislative authority of Parliament." Thus, those telephone companies, such as those in Alberta, Saskatchewan, Manitoba and the Atlantic provinces, are not covered. Fourth, there would appear to be no defence such as truth, fair comment or public good. Fifth, the offence is that of the person communicating the message, not the carrier. Sixth, section 42(1) of the Act provides that where a tribunal finds that section 13 has been violated, it can only make an order that the communicator cease and desist from the discriminatory practice. In other words, no order for payment of damages can be made.

By way of background, when Attorney-General Basford explained the reasons for section 13 before the House of Commons Standing Committee on Justice and Legal Affairs, he explained that this section was being introduced largely as a result of requests from the Attorney-General for Ontario, who felt that neither the symbols and messages provision under the Ontario Human Rights Code, nor the Criminal Code provision concerning hate literature and group defamation, would appear to apply to recorded hate messages on the telephone, and so he had prevailed upon the federal government to do so.

There is only one case dealing with this provision -- Canadian Human Rights Commission v. Western Guard Party and Taylor (1979). This was the first time that a Hearing Tribunal was appointed under the federal Act. It was set up to inquire into complaints from a number of Jewish organizations and individuals in Toronto who alleged that the respondents were violating section 13. The respondents, and more particularly Taylor (it did not appear that there were many others besides him as members of the party), had been running a dial-a-message operation for some time. The messages were changed periodically but the gist of them, based upon expert testimony submitted to the Hearing Tribunal, was that they did, and were probably intended to, expose Jews to hatred. The Hearing Tribunal reviewed other restrictions on free speech to demonstrate that the restriction in Section 13 was consistent with pre-existing restrictions. As was suggested earlier, the Tribunal held that it would not listen to any attempts by the respondent to try to prove the "truth" of his statements, because "truth" was not a defence. The respondents were ordered to cease and desist from continuing the messages, in contravention of Section 13 of the Act. Subsequently, the respondents changed the form of the message, but not its essence. The Canadian Human Rights Commission applied to the Federal Court of Canada for enforcement of its order and, on February 22, 1980, the respondents were cited for contempt of court, but the court suspended the citation on the condition that the respondents stop playing racist messages over the telephone. However, when the respondents merely deleted some specific anti-semitic references from the tape, but continued to play essentially the same types of messages, another Federal Court, in June, 1980, issued a warrant for Mr. Taylor's arrest and ordered the party to pay a $5,000 fine. At this point Taylor went into hiding and did not turn himself in until April, 1981. He then applied to the Supreme Court of Canada for leave to appeal, but on June 22, 1981, the appeal was dismissed.

Race Relations and the Criminal Justice System

by

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"Because prevalent unemployment affects young people to a disproportionately high degree, and is even higher among youths of visible minorities, there is a greater tendency for these young people to group together. Depending on the manner of police intervention when they observe these groups in public places or elsewhere, the situation can needlessly degenerate. Understanding cultural differences in body expression, assertiveness or lack of assertiveness, would be helpful in decreasing the number of situations which wind up in arrests."

It is a welcome change to be able to discuss and debate publicly the subject of race relations in the criminal justice system. By custom and practice in Canada, the question of race relations is generally taboo. Racial prejudice is a social problem south of the Canadian border. In official statements, Canada is described as being a country without a colonial past and without a history of racial discrimination. In such a context, it is necessary first to demonstrate the existence and harmful effects of racism in Canadian society before arriving at the problem solving stage.

Members of visible minority groups are very conscious that historically, Canadian immigration policy was aimed at preserving a predominately, if not exclusively, European population. Recently, at a conference held in Toronto to study proposals for the reform of procedures leading to the recognition of refugee status in Canada, the Minister of Employment and Immigration, the Honourable Lloyd Axworthy, quoted from policy statements of Clifford Sifton, Canadian Minister of the Interior in 1896, to remind the participants that the majority of Canadians are descendants of pioneering immigrants. He quoted the picturesque terms used by Clifford Sifton to describe the ideal candidates for Canadian immigration:

> I think a stalwart peasant in a sheepskin coat, born on the soil whose forefathers had been farmers for ten generations, with a stout wife and a half dozen children, is good quality.

But this policy of encouraging agricultural settlers was coupled with a discriminatory policy excluding Black American farmers. In a message to an American agent, the assistant-secretary of the department stated in no uncertain terms:

> It is not desired that any Negro immigrants should arrive in Western Canada under the auspices of our department, or that such immigration should be promoted by our agents.

The first chapter of Professor Tarnopolsky's recent book, Discrimination and the Law, gives a concise yet clear and well-documented outline of restrictive laws governing immigration, employment codes, and electoral rights of non-European peoples, particularly in Western Canada, in the late nineteenth century and the beginning of the twentieth century. There were federal laws denying the franchise to persons of Asian origin and Native peoples until after World War II. History records the internment and deportation of Japanese residents and Japanese Canadians as discriminatory treatment since the same policy was not applied to residents and Canadians who were of Italian or German origin. It is interesting to draw a parallel with the treatment of persons of Asian origin in the United States of

America both in the nineteenth century and during the second world war. The policies were strikingly similar. For example, during this war, approximately 110,000 persons of Japanese ancestry, 70,000 of whom were American citizens, were interned in detention camps. However, at the end of World War II, anti-discrimination legislation was introduced in New York State and in two Canadian provinces. This paper does not purport to present legislative history; nevertheless it is necessary to record the existence of racially discriminatory and exclusionary legislation in Canada, legislation which was generally upheld by the Canadian courts.

Before turning to the study of the criminal justice system in Canada, it is useful to recall that while race has been used as a classification to discriminate, current anthropological, biological and genetic studies have destroyed the scientific justification for such classification. According to studies published by the UNESCO Conference in Athens in 1981, it is impossible to "arrive at any objective and stable definition of the different races and consequently [the word race] is deprived of much of its biological meaning." Genetic structures of two individuals belonging to the same population group can be far greater than the difference between the average genetic structures of two population groups. To summarize, "since no human group possesses a consistent genetic inheritance," biology cannot serve as a basis for establishing a hierarchy between individuals or population groups. Furthermore, "the complexity of the interaction between biological and cultural factors makes any attempt to establish the relative importance of innate and acquired characteristics completely meaningless." According to the findings of the Athens conference, social sciences do not demonstrate that racism develops inevitably when certain kinds of social relationships predominate between different ethnic groups.

While the conclusions of the conference dealing with scientific fact are more novel, the socio-political findings are consistent with those of the Citizenship Branch of the Canadian Department of the Secretary of State, as published in a 1968 brochure, The Study of Prejudice and Discrimination, that prejudice can serve to justify the economic exploitation and domination of a powerless or less powerful group. The examples quoted are those of colonial exploitation, the exploitation of low income workers, women workers and immigrant workers.

While the criminal justice system, and in particular officers of the criminal justice system, officially serve the law as an instrument of social order, in general, visible minority groups perceive the law as an instrument of social policy. The significance of this conference is then the occasion of confronting sometimes conflicting views of the role of the criminal justice system at present, and the role which it may come to play in the future.

To conclude this introduction, it must be noted that legislative competence over the administration of justice is divided between federal and provincial authorities, with some powers delegated to municipal authorities in relation to police matters. The examples used to illustrate the opinions in this paper will generally be taken from Quebec, but they are representative of situations in other parts of Canada. The objective of the paper is to stimulate discussion on the different branches of the criminal enforcement system: police forces, the prosecution, courts, and the corrections system.

A. Police Forces

As pointed out in Israël Ludwig's general theme paper for this conference, members of cultural groups come into contact most directly and most often with police officers. My colleague, Mr. Ludwig, has painted a dramatic picture of recent racial incidents across the country and he has underlined the need for improved police training to interact with community groups in order to prevent crime and solve crime. I will single out the functions of investigation and arrest as areas of pronounced friction in relations between the police and the cultural communities.

Individual members of cultural communities are the subject of investigations; as communities, visible minorities are the subject of investigations; yet ironically, cultural communities complain of a lack of conscientious investigation of certain crimes within the respective communities.

Individual members of cultural communities are often stopped for questioning because they resemble a suspect who is a member of the same cultural group. More communication and contact with cultural groups will improve discernment and considerably lessen this cause of friction. Members of some communities are more frequently questioned than others; one such community is the community of Rastafarians which are both a cultural community and a religious group. Young members of this community are often questioned and arrested because of their non-conformist appearance. They are generally the object of stereotyping.

Cultural communities have been the object of investigations for intelligence purposes. While it is undoubtedly true that these investigations are also carried out in the general community, some of the methods used by police forces engaged in these activities have been extremely detrimental to the interests of a particular community. Given the minority position of the cultural community, their vulnerability is greater and the effects more lasting. Let us take as an example which is reported in the Third Report of the McDonald Commission into Certain Activities of the RCMP known to the government, the activities of Warren Hart. This person acted as an agent provocateur, offering to procure arms and explosives to persons in the Black community and to Native peoples between 1971 and 1975. The activities of Warren Hart came to light because of his own public statements made in order to vindicate his reputation. The acts of Warren Hart were callous manipulation of young people; his presence and persistent intervention in internal community affairs frustrated the rights of citizens to freedom of speech and freedom of peaceful association.

Members of cultural communities report that police officers often show lack of interest in undertaking investigations aimed at solving a crime committed against them. While police forces are presently suffering from considerable cutbacks in personnel and resources, this complaint is not recent. It was stated in a report and recommendations made by the Negro Community Centre Inc. to the Public Security Council of the Montreal Urban Community in May 1979. The extreme case of lack of investigation of the complaints by members of the Sikh Temple in British Columbia that their temple was being desecrated, and the subsequent prosecution of the complainants themselves explains feelings of mistrust and hostility towards police forces in some circumstances.

With respect to arrests, there are complaints of community groups about individual arrests as well as complaints about arrests of large groups of persons. Community groups often perceive the action of police officers in arresting young members of different ethnic communities as being overzealous if not outrightly discriminatory. Several factors must be taken into consideration. Because prevalent unemployment affects young people to a disproportionately high degree, and is even higher among youths of visible minorities, there is a greater tendency for these young people to group together. Depending upon the manner of police intervention when they observe these groups in public places or elsewhere, the situation can needlessly degenerate. Understanding cultural differences in body expression, assertiveness or lack of assertiveness, would be helpful in decreasing the number of situations which wind up in arrests.

Without mentioning the various occasions when members of ethnic communities feel that they are the object of unfair treatment, the use of powers of investigation for the purposes of immigration is a particularly sore point. Too frequently all members of visible minority groups, except Native peoples, are treated in situations of arrest, as if they are to be presumed to be without status in Canada. While peace officers have the duty of controlling and reporting people in Canada illegally, this power can be abused as in the case of a permanent resident who was held all of Christmas Day and released only the following day, purportedly so that his immigrant status could be checked. In this particular case, the person offered the officers the possibility of verifying his identity through his family, to no avail.

More serious are the cases where minor offences provoke the use of force which is excessive under the circumstances. In Montreal, a member of the Caughnawaga Reserve was pursued by two officers of the Sureté du Québec for a traffic violation. He refused to stop and drove to the reserve. The officers pursued Mr. Cross onto the reserve and ordered him out of his car. When he refused to disembark, one officer broke the glass pane in the door of the car. Mr. Cross was shot by the officer and killed. At trial, the officer testified that he had acted in self defence because he believed that Mr. Cross was armed. The officer was acquitted. It is regrettable that the officers did not take the registration number of the car and solicit the assistance of the Native peace keepers on duty on the reserve.

Besides the very detrimental effects such incidents have on the relations between a particular group and the police forces, the publicity surrounding these incidents inevitably stirs up prejudice and ill feeling towards the members of the minority group. Expressions of personal opinion on open-line radio shows subsequent to events such as the forced entry and seizure of fishing nets and equipment around the Restigouche Reserve in Quebec on June 11, 1981, revealed much misconception concerning the traditional hunting and fishing rights of Native peoples, their right to adopt by-laws concerning the administration of the reserve and their right to preserve and develop their culture.

Without commenting on the case referred to by Mr. Ludwig in his theme paper, since the Human Rights Commission of Quebec is pursuing the case before the Superior Court of Quebec, a few facts may nevertheless be given about the incident of June 1979 when the Montreal Urban Police arrested several young Haitian men for disturbing the peace in a public park and assault upon police officers. After the arrest and release of the persons in question, the internal affairs department of the police force carried out an investigation which concluded that there had been police brutality on the person of at least one accused but that it was impossible to identify the officers responsible for the acts. The Human Rights Commission concluded that there had been discriminatory treatment of the four complainants based on race and ethnic origin. Both as a result of the request of the Minister of Justice of Quebec, the Honourable Marc André Bédard, and on its own initiative, the Quebec Police Commission held an inquiry into the events at the park. While the inquiry was pending, however, the disciplinary committee of the police force held a hearing to which lawyers for the complainants were excluded; the disciplinary committee concluded that there had been misconduct on the part of two officers: one officer who had struck a complainant with a metal object injuring him in the mouth.

He was suspended for two weeks without remuneration. The other officer who had placed his hands around the neck of another complainant in the police station in order to restrain him received a suspension of one day without remuneration. When the hearing came up in turn before the Police Commission of Quebec, this board ruled that the disciplinary measures already handed out to the two officers were sufficient. They ruled that although the officers in general might have used misplaced words, this did not constitute discrimination nor racism; at the same time they decided that the group of young Haitian soccer players and their friends were a noisy group in the park but without evil design. Subsequently the young people were acquitted of the charges laid against them in Municipal Court. Only the Superior Court case instituted by the Human Rights Commission is pending. Numerous community groups, civic groups, and cultural groups expressed their support during the defence of the accused/complainants. The decision of the Superior Court is anxiously awaited.

Without dwelling on the recommendations already proposed by Mr. Ludwig, my opinion is that a complaint procedure within the police force, in order to have credibility must be administered by an independent body. The development of community programs in collaboration with ethnic groups to promote better relations would be a valid objective for local police forces. Periodically such programs are initiated along with training sessions for members of police forces to acquaint them with the expectations of community groups; however, these programs are often short-lived and must be continously revived.

An effective affirmative action program that would promote the recruitment of a significant number of police officers from among members of the ethnic community is essential to ensuring the servicing of the policing needs of the different community groups. Token or limited representation of minority groups places an impossible strain on the officers recruited from among minority groups and can be ineffective unless sufficient numbers from the varying communities are named and new priorities are explicitly set forth to work towards problem solving in intercommunity relations.

Several cities in Canada now operate ethnic relations programs, the most prominent of which is the Ethnic Police Squad in the City of Toronto. These programs require officers to follow a course in multiculturalism and courses in human rights legislation. For approximately the last six years, the RCMP has also implemented a course in cross-cultural relations for members of its force. These courses were begun because of recommendations from Native people's organizations; approximately 3,000 officers have followed these courses in the last six years. Besides these study sessions, the RCMP has appointed Native police coordinators in most areas under their jurisdiction and at national headquarters. These programs are a positive and formal step towards eliminating causes of racial tension.

According to the coordinator of race relations of the Toronto Metropolitan force, the Toronto program has been responsible for a 25 per cent decline in racial tensions in Toronto. The Metropolitan Toronto Committee on Race Relations and Policing provides a direct forum for communication between community spokespersons and police directors. Both parties to the dialogue are now more knowledgeable of the questions involved in solving interracial hostilities. New procedures have been set up to study complaints of racial crime against cultural groups either collectively or individually. For instance, complaints dealing with the dissemination of hate literature are funnelled to the intelligence bureau of the police department and then to the Ontario Attorney General's Department. The results of the study of the department are then communicated back to the complainants. As Mr. Ludwig has stated however, in his forceful argument for stricter enforcement of criminal code sections prohibiting the communication of hate messages, very few prosecutions have been instituted under the relevant sections in the 12 years since they have been adopted and this despite the phenomenal amount of hate literature in circulation in Canada and the resurgence of racist attacks against members of visible minorities and members of the Jewish community.

In the face of these seemingly contradictory findings, there are no infallible solutions. The nature and degree of intolerance among different groups varies according to historical factors and sociological and economic circumstances. In the United States a National Minority Advisory Council on Criminal Justice was set up to counsel the Law Enforcement Assistance Administration in the U.S. Department of Justice. This 15-member body was established in June 1976 and comprises a cross-section of representatives from major ethnic minority groups in the United States, namely Blacks, Mexican Americans, Puerto Ricans, native Americans and Americans of Asian descent. Lee P. Browne, a Black criminologist, was named to preside over the council. Members of the council include lawyers, law enforcement officers and a journalist. The mandate of the council was to identify and evaluate minority problems and concerns as these relate to crime and the criminal justice system. Public hearings were convened in various areas of the United States, as a result of which the council was able to monitor the expression of concern for the needs of adolescents, the development of diversionary treatment programs, the double standard of justice as it pertains to Mexican Americans and native peoples in the Southwest of the United States; the lack of minority representation within the criminal justice system and policy-making levels as well as the continuing problem of police homicide committed disproportionately against minorities. In 1977 the National Minority Advisory Council presented testimony to the House judiciary sub-committee on crime. The testimony can be summarized as follows:

1. That research activities which will have an impact on minorities be designed and implemented by minorities.

2. That national demonstration criminal justice programs should include participatory involvement of minorities, including those from non-government agencies.

3. . . .

4. That community anti-crime programs should be developed and implemented as mandated by Congress in 1976.

5. That the Law Enforcement Assistance Administration (LEAA) should operationalize a strong civil rights compliance program. Governmental agencies that discriminate should not be subsidized.

6. That minorities should be appointed and assigned to policy making positions with LEAA.

7. That an essential part of any realistic effort to control and reduce crime is community involvement.

Although equal opportunity legislation and executive orders are much more developed in the United States in promoting the hiring of members of minority groups in both public and private sectors, the council's public hearings revealed that little progress had been made in integrating the administration of justice.

B. Prosecutions

Many of the comments concerning lack of sensitivity to cultural differences and very limited representation of minority groups will also apply to this section of the presentation. These factors however are compounded by the large measure of discretion which is exercised by the office of the Attorney General and Crown Prosecutors in general. A very systematic presentation of the scope of the powers of Crown Attorneys is presented by Maurice Manning, Q.C. in his paper entitled Abuse of Power by Crown Attorneys, published in the 1979 Special Lectures of the Law Society of Upper Canada on the general subject of abuse of powers. Although Crown Attorneys do not initiate prosecutions, their role can be determined in advising detectives whether a prima facie case can be made out from the evidence available and whether a prosecution is justified. Strictly speaking, the Crown Attorney has the power to request a liberation hearing under the articles of the Criminal Code, which request can result in the accused being detained for up to three days; the Crown often charges multiple offences for facts arising out of the same incident; has the power not to disclose evidence until trial; the power to proceed summarily or by indictment, which decision affects the sentence to which the accused is liable; and the power to appeal a conviction. Mr. Manning prefaced his remarks on the abuse of such powers with his misgivings as to the future of his criminal law practice; however his command of the subject is so complete that this presentation could only inspire respect.

Some fundamental questions must be raised when analyzing the impact of criminal prosecutions. It is difficult to dissociate factors of class and social status from the study of the impact of criminal prosecutions. In a time of high unemployment, the correlation between joblessness and crime is even more significant. In the previously mentioned testimony of the National Advisory Council on Criminal Justice to the House Judiciary Sub-committee on Crime in 1977, this relationship was underlined. "While it cannot be substantiated that unemployment makes criminals, it is true that it contributes to the causes of crime. Minorities in prisons and jails are far out of proportion to their percentages in the general population;..." In the Province of Quebec, statistics gathered in 1976 showed that 80 per cent of persons detained in provincial prisons were serving a sentence of less than three months and that of these approximately 50 per cent had been convicted for default in paying a fine which in the majority of cases did not exceed $60. About 75 per cent of these persons were unemployed at the time of their arrest. These statistics are taken from a report published by the Ligue des droits et libertés, volume 4, March 1979. It is obvious from the findings of the police commissions on organized crime that it is more difficult to prosecute members of organized crime; it is also an incredibly complex matter to prosecute responsible parties under anti-combines legislation. These are questions which obviously recall considerations which were put forward in the introduction to this paper about the formulation of the law as an instrument of social policy.

Some members of minority groups are obviously responsible for the criminal acts they commit. They nevertheless benefit from presumptions of innocence and the right to a full and complete defence as do other members of the community at large. This paper is concerned with prosecution of racially motivated acts directed either against an individual member of a minority group or against the group collectively.

Individual crimes of violence are often perpetrated against members of visible minorities; as ironically as it sounds, the victims of these racially motivated attacks very often find themselves the accused party before the criminal justice system. An example is the case of a Haitian taxi driver in Montreal who was the object of racial harassment by other taxi drivers as he pulled into the taxi stand. Two taxi drivers left their taxis and came up to the Haitian taxi driver accusing him falsely of having superseded them unfairly in his place in the taxi stand. As the only Haitian taxi driver on the stand at that time, the Black taxi driver was completely without protection. He picked up his radio phone to report the incident but one of the assailants ripped the phone from the connection. The two assailants abused the Black taxi driver with racial slurs. He was outraged, overwhelmed, and in a movement of anger and panic, he swerved his car and ran into the taxi of one of his assailants. The police were then called by other taxi drivers on the stand who up to this time had remained aloof from the incident. When the police came, the Haitian taxi driver was charged with mischief for destroying private property belonging to the owner from which his taxi was rented. The police investigator revealed to the Crown that there was to his knowledge racial prejudice and harassment of the accused victim and suggested that this was appropriate material for consideration of sentencing. Through discussions with the Crown, the taxi driver received a conditional discharge; he was ordered to keep the peace. No charges were laid against the two assailant taxi drivers. The Haitian taxi driver had no eye witnesses to corroborate his version of the incident.

Very often disagreements which are civil matters can deteriorate to racially motivated assaults. In one such instance, a member of a cultural minority rented a typewriter for her student daughter. The rental was for one month. On the twenty-ninth day, the owner appeared at the home of the mother to claim the typewriter since, according to his statements, his previous experience with members of her ethnic group led him to distrust her and her daughter and to fear that his typewriter would not be returned. He stated that had he been present in the store when the contract was concluded, he would not have rented the typewriter to her for her daughter's use. Incensed by the completely unwarranted and unjustified insult, the mother requested that the proprietor leave her house. He left after much continued verbal abuse and deliberately damaged the door of her property. The following day the mother went to the business to make a claim against the merchant for damage to her property, only to be confronted by a more irate businessman and more abuse. At this point, the evidence is contradictory; however, according to the mother the businessman went so far as to draw a rifle in order to intimidate her and she withdrew a pair of scissors from her purse and retreated to the door. The merchant signed a complaint against the mother for assault. The mother called the police department to lay a complaint against the merchant. However, the Crown having already received the complaint of the merchant directed the mother to seek counsel for a private prosecution inasmuch as the Crown Attorney would be in a contradictory position representing both parties. Through discussion, both parties were prevailed upon to drop their respective complaints.

More serious racially motivated incidents have led to the death of a victim. A Nigerian foreign student was refused access to a disco club. He was agressively pushed from the entrance, lost his step, fell down two flights of stairs and suffered permanent injury. He died as a result of this injury. The doormen at the disco are known to police officers for their previous police record and their use of baseball bats to intimidate unwelcome clients. In the case of the Nigerian student they were charged in the Municipal Court with disorderly conduct; all were acquitted. In that instance no charges were laid against the doormen. In a subsequent incident two young people were similarly thrown down the two flights of stairs and charges were laid against several doormen of a disco club. The detective who laid the charges was very earnest and conscientious in the investigation of the case; however, evidence was contradictory and the charges were dismissed.

The numerous cases in which traffic violations deteriorate into incidents where racial slurs are exchanged are too long and too commonplace to recount. These incidents lead to charges of mischief, disorderly conduct, and quite frequently charges of obstructing a police officer in the execution of his duties or assault on the person of a police officer. Sometimes the disagreement with police officers arises because of a lack of information on Canadian traffic laws. But the conduct of the police in taking information from the member of the majority community first, inevitably leads to mistrust and suspicion on the part of the member of the visible minority group.

Without repeating previous comments on the limited number of prosecutions against disseminators of hate propaganda, there are other areas where prosecutions are seldom instituted. A case in point is the policy of not prosecuting Canadian employees who exploit foreign domestic workers. Foreign workers are also often forced to work in unsanitary and unsafe conditions which can continue because of the insufficient number of government inspectors. When accidents inevitably occur, foreign workers seldom have the moral and financial resources necessary to obtain full civil compensation.

As a general recommendation on the subject of prosecutions, this conference may consider ways and means of involving community members in crime prevention projects that would serve a double purpose of providing employment and improving interracial relations.

This conference should also consider the possibility of recommending that a study be commissioned on the advantages and disadvantages of providing mechanisms for diversion of criminal cases. Programs of pre-trial intervention would permit an accused voluntarily to make restitution or follow an educational program without going to trial.

C. The Court

Technically, the role of the Crown Attorney should be included in the remarks under this section; however, in order to make a fuller presentation, the role of the Crown was treated in the previous section.

Often, in a trial setting, the accused who is a member of a visible minority facing accusations which result from a racially motivated incident is bewildered by the trial setting. He often blurts out his defence as quickly as possible. Under these circumstances, the president of the tribunal very often is sceptical of the reasons given. In the court setting the accused often censor their own behavior. The best evidence of racial motivation is made by police officers or complainants who testified that they have heard racial remarks or sometimes in the case of complainants that they did indeed use racial slurs. Unfortunately, the argument of self defence because of a racially motivated attack often meets with little success partly because of a disbelief in the frequency of such racially motivated incidents. Because some accused have obviously made unfounded defences, others are discredited. While provocation is not a defence to assault, evidence of racially motivated acts and insults should call into question the credibility of the prosecution witness.

Besides the central role of appreciating evidence, judges and magistrates decide questions of bail. While standards for setting bail may be the same for all persons accused of similar acts, often from the viewpoint of the member of the minority group, the bail seems disproportionately high. This question is more commonly an issue in multiple trials where members of minority groups are accused of public disturbance, mischief or obstruction of justice. In the case of the student occupation of the Sir George Williams University computer centre, bails were set between $1,000 and $12,000 for individual students. These sums were eventually put up by the governments of the countries of origin of the students and in a few individual cases, by parents of the students. When the students in the first collective trial were acquitted on 11 of 12 counts, and convicted on the count of conspiracy to commit mischief by occupying the computer centre and depriving the university of its use, the sentences were handed down in the form of fines which corresponded to the amounts of bail set.

In the Canadian setting, some statistics exist that show varying impact of sentencing on Native and non-Native people. The following table is reproduced from the in-depth study of Harold Finkler, Inuit and the Administration of Criminal Justice:: the case of Frobisher Bay.

These statistics are explained in various ways and will no doubt lead to further discussion. However, there is no doubt that the author outlines some of the fundamental obstacles to superimposing the criminal justice system of the dominant community on the Inuit people. For the Native people of the N.W.T., the RCMP officer was often their first contact with the new civilization. Besides the complete disruption of cultural patterns, the criminal justice system was an additional imposition. Finkler explains the difficulty of translating into Inuktitut concepts of guilt and of mens rea.

In an attempt to adapt Euro-Canadian laws to the culture of the north, the first territorial court judge, J.H. Sissons decided that "the proper place for a trial is the place where the offence was committed" and that "no man shall be condemned except by the judgment of his peers and law of the land." These decisions led to the creation of the itinerant court of the Northwest Territories. Both Mr. Justice Sissons and his successor Mr. Justice Morrow consciously adapted majority standards to the particular situation of the north in order to "accommodate concepts of right and of justice developed by another culture." Among the attempts to adapt the principles of the law to the particular situation, Mr. Justice Morrow frequently imposed sentences that did not deprive of liberty, handed down shorter imprisonment sentences for Inuit because of their shorter life expectancy and also reduced the number of long-term sentences to avoid sending northerners to the penitentiaries of the south.

Major difficulties remain however in areas of legal representation for Inuit who are about to stand trial and in cases where imprisonment is pronounced. The extension of legal aid services and the program of the Inuit Tapirisat of Canada to disseminate legal information in Inuktitut were efforts made in 1971 and 1972 to overcome what the N.W.T. Indian-Eskimo Association described as "accumulative sense of injustice." Some very disturbing observations are reported by Finkler such as the belief of D.C. Hayes expressed in Law and the Eskimo in Canada Today, that if the concept of mens rea were properly applied to Eskimo trials, the "Eskimo

Table 30

Conviction of Offences Committed During 1972, Before the Judiciary, by Offence Type per Racial Group[1], Frobisher Bay, N.W.T.

	Sentence																									
	Non-institutional														Institutional											
	Suspended sentence		Suspended sentence + probation		Probation + fine		Fine		Recognizance to keep the peace		Racial group sub-total Eskimo		Racial group sub-total non-Eskimo		Fine + institution		Institution		Institution + Probation		Racial group sub-total Eskimo		Racial group sub-total non-Eskimo		Total convictions	
	E	NE	E	NE	E	NE	E	NE	E	NE	N	%	N	%	E	NE	E	NE	E	NE	N	%	N	%	N	%
Against the person and sexual offences			5		1	1	33	6	1	1	40	13.1	8	14.0			19	1	7		26	34.7	1		75	17.0
Against property	1		7		4		14	2			26	8.5	2	3.5			15		1		16	21.3			44	10.0
Motor vehicle							25	31		1	25	8.2	32	56.1											57	12.9
Liquor offences	1		4		1		190	9			196	64.3	9	15.8	3		28				31	41.3			236	53.5
Against administration of justice, drugs and other			1				17	5		1	18	5.9	6	10.5			2	2		1	2	2.7	3		29	6.6
Grand Total	2		17		6	1	279	53	1	3	305	100.0	57	99.9	3		64	3	8	1	75	100.0	4	100.0	441	100.0

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[1] E and NE represent Eskimo and non-Eskimo.

would not plead guilty." When it is realized that there is no word in Inuktitut to translate "guilty," and that the vast majority of cases before magistrates are settled with guilty pleas, the extent of the problem is underlined.

Although a marked effort has been made to decentralize correctional services in the Northwest Territories, the problems of rehabilitation would appear very complex especially since, as Finkler points out:

> ...la structure des castes dans les centres dominés par les Blancs, où les Inuit sont relégués à un statut inférieur et ne participent pas pleinement à la vie socio-économique de la collectivité, n'a fait que renforcer les sentiments de frustrations et d'hostilité des Inuit envers ce nouveau mode de vie.

Before terminating this section on the court setting, the role of defence lawyers should be touched upon. As in any criminal case, defence attorneys face the challenge of advising their clients to the best of their ability. However their task is made more difficult by the nature of the defence and the prevalent scepticism about the existence of racially motivated attacks. In these circumstances, victims are often dissuaded by their own defence lawyers from bringing up questions of racism on the basis that to do so would only make matters worse for them. For the same reasons, counter charges are very infrequent. The existence of the growing number of attorneys who are members of ethnic communities may permit victims of racial attacks to choose the type of defence which they feel best suited to their case.

D. Corrections

This section will deal briefly with the Canadian penitentiary system and the National Parole Board.

As with the statistics presented on the pattern of sentencing of Inuit people, the statistics on the inmate population of Canadian penitentiaries are very disturbing. Recent statistics of the Correctional Service of Canada demonstrate that Native persons are three times over-represented in prison population in comparison to the general population. I am taking the liberty of quoting information communicated to me at a briefing session preparatory to this conference. At that time I learned that there is an increase in young Natives serving life terms. Natives are more likely to be in high-security institutions, and have a lower proportion of parole releases. No doubt discussion will also centre around the explanation of these statistics. A number of liaison programs operate at the different federal institutions to limit the effects of disorientation. The question must be asked however, whether the disproportionately high representation of Natives in the Canadian prison system is a reflection on the Canadian criminal justice system or on criminal law as an instrument of social policy. Statistics on the over-representation of Native peoples within the Canadian Penitentiary Service demonstrate the systemic racism inherent in Canadian society. The reform of penitentiary systems in the North may be considered along with reform programs of northern administration now under advisement. The impact of the criminal justice system on Native peoples in the provinces, however, will not foreseeably be resolved in the same manner. Besides general recommendations for improved communications and cross-cultural educational programs, emphasis must be placed on eliminating racial discrimination and affirmative action programs with compliance mechanisms, not only in the area of recruitment of prison personnel, but for general employment opportunities.

Statistics on the over-representation of Blacks in the Canadian Correctional Service were also communicated at the preparatory meeting. According to this information, Blacks are approximatley 10 times over-represented in the federal inmate population compared to the general population of Canada. Some liaison programs exist in the Atlantic Provinces and in Ontario. I could recommend other programs to solve this problem.

The penitentiary system can be considered as the appendix to the enforcement branch of the Canadian justice system. Serious questions are raised concerning the efficiency of the prison system as a means of rehabilitation. In agreement with the general propositions for reform of the prison system, I would recommend that imprisonment be restricted to dangerous offenders and that more resources be shifted to the creation of community-based rehabilitation programs.

In the immediate future, the general use of disciplinary boards within penitentiary institutions should alleviate some of the stress and harassment caused by inter-racial tensions whether between inmates or between personnel and inmates. Increased opportunities for participation of cultural groups in prison programs should be provided and petty discrimination such as the refusal content should be eliminated. Mr. Ludwig has already spoken of the necessity for respecting religious practices of inmates. I would add that stereotyping of members of visible minorities should be avoided. Unless the courts control the action of prison personnel more closely, all these recommendations become academic.

The recruitment of a significant number of members of minority groups may improve the image of classification and assessment methods practices by prison personnel. The appearance of fairness and non-discrimination is essential in a system predicated upon advancement by merit. Moreover as with other enforcement officers, prison officials can only fulfil their duties acceptably if they receive adequate guidelines from the penitentiary service and the directors of prisons.

While ethnic representation is already present at the level of the National Parole Board, and Regional Parole Boards incorporate the participation of community boards at certain levels of decision making, socio-economic and cultural factors seem to inhibit normal functioning of release mechanisms for members of certain minority groups. In relation to Native peoples, factors such as the nature of the offence for which time is being spent and the record of recidivism, according to present rules, prohibit the granting of parole. In the case of Black inmates the statistics are distorted by the use of parole for deportation purposes. Essentially, the same remarks concerning the exercise of discretion by penitentiary officials apply to the use of discretion by members of the Parole Board and their officers.

Non-Legal, Civil and Community Response

by

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> "What needs to be stressed here is that difficult economic times do not have to automatically lead to racial hostilities, such times only provide the fertile soil for racism, in the sense that the people, ordinary people, are more vulnerable to racial ideology. They are more likely to act out their frustrations on what they are led to believed, wrongly, as the cause of their problems. What I am suggesting is that difficult economic times provide a fertile soil not so much for overt racism, but for racist ideology, racist bigotory. It is not the ordinary people who do the scapegoating. It is done for them in the form of dissemination of a racist ideology."

I am deeply honoured to participate in this very important and timely Symposium on Race Relations and the Law. I would like to take this opportunity to first congratulate the federal Ministry of State for Multiculturalism and its functionaries for responding to a very real social issue, which is rapidly assuming alarming proportions. This symposium shows that government at the highest level is concerned about the growing problem of racism in Canada, about the rise of overtly racist organizations such as the Ku Klux Klan and neo-Nazi parties across the country, and about ensuring proper legal and institutional means for the protection of human rights and human dignity of all Canadian people.

Allow me to also congratulate the many grassroots organizations in the many parts of Canada, representing the voice of thousands and thousands of people from the many ethnic, religious, and cultural minorities, from women's organizations, from the trade union movement, etc., who for the last couple of years have indeed made a significant contribution in raising to a higher level of social consciousness the issue of growing racism and the problem it poses for society. I would very much like to urge that this symposium acknowledge the contribution of the thousands of these ordinary and decent people of Canada who have been giving their time, energy and emotion, setting aside their personal goals and priorities, so that Canada could really become a multicultural society.

The task assigned to me this morning is a big one. I cannot presume to be speaking for the whole of Canada, for all of its many communities and their concerns. In the last few months, however, I have attempted to speak to many organizations and concerned individuals to assess their perceptions of the problem and to grasp the issues and concerns which need to be raised here. Let me convey to you, ladies and gentlemen, that the people out there are full of expectations as to the outcome of this symposium. Let us resolve that their expectations and confidence are not betrayed, that this symposium does not become one more of the many in which some of us have participated in the past, where after much pontification about equality and human dignity and a lot of back-slapping the delegates departed and nothing much came out at the end. I sincerely hope that the deliberations of this symposium will lead to some very necessary and determined actions on the part of the Canadian government.

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The many speakers at this symposium have already pointed to the disturbing growth in recent years in racial incidents. While I do not want to dwell upon this point, there are a few things I would like to emphasize.

First of all, let me try to convey to you as to what it means, in human terms, to be on the receiving end of racial harassment, intimidation, bigotory and violence. I do this not to create any unnecessary drama, but to point out that the racial problem is not simply a law and order problem, or something which can be simply reduced to statistical categories; it has deep human dimensions, and calls for a high degree of moral commitment.

What, then, does it mean to be a member of a visible minority in Canada? It means returning from a trip abroad, lining up at the immigration counter with other Canadians, and experiencing being singled out for an extraordinary checkup of the baggage while the rest go by easily. It means going for a job interview and before even getting a chance to fully discuss the qualifications being told that there was no vacancy. It means being jeered at on the streets, in buses, and other such places by absolute strangers. It means standing on the street and being spat on the face by people who contemptuously walk by. It means being a taxi driver and experiencing insults, harassment, and often brutal violence from the passengers. It means being hounded by a bunch of toughs on the streets, and kicked around. It means ghettoization in low-paying, unorganzied, unprotected, unhealthy work situations. It means living under constant threat that the windows of the house will be broken by stones and maybe even firebombs. It means repeatedly encountering indifferent and often hostile attitudes at law-enforcement and other governmental agencies, to a point that the level of confidence itself in the whole society becomes weaker. It means being held "responsible," as scapegoats, by the media, by public polls, and even by government functionaries, for all the ills of society such as growing unemployment, scarce resources at educational institutions, etc. It means all this and more.

All these are some of the concrete experiences which members of the visible minorities face in this society. The full human dimensions of these experiences must be clearly understood by those who are responsible for the running of this society. The humiliation, the indignity, the anxiety, the insecurity, and the anger: they are all there. It would not do any good to treat these as, maybe, isolated experiences. As someone who has lived in three of the major cities in Canada and who has participated in many grassroots organizations, I can assure you that these and similar experiences are not isolated events. But the main point I wish to make here is that even if these events were happening to only a few people, in fact, even if one person experienced indignity and violence due only to his or her racial, ethnic or religious background, it should still be seen as a serious indictment of the whole of Canadian society.

The second thing I wish to emphasize about current developments in the racial situation is that not only have racial incidents been increasing in quantitative terms, which has been cited by other participants in this symposium, but there is also a marked qualitative shift. In other words, what members of the visible minorities have been experiencing in the last couple of years is significantly different from the usual discriminatory practices that have been a part of the Canadian experience. You have undoubtedly heard of the several houses that were firebombed and gutted in British Columbia. These were acts of calculated murderous intent on the part of some racial bigots. And it is only miraculous that dozens of people - men, women and children - who lived in these homes were not roasted alive while sleeping in their own beds. Think also of Khushpal Gill, a young immigrant from India, who in the middle of the night, on his way to work, was stopped, grounded and kicked to death by a bunch of racists. Eyewitness testimonies presented in the courtroom described the brutal savagery and racial bigotary with which innocent Gill was killed. Or, think of the man standing on a busy street, in broad daylight, waiting for the bus. A four-inch needle, with a flap attached saying "KKK" was shot in his stomach with some kind of a gun from a passing car. Only a couple of inches saved his heart, and maybe his life. (Here is the actual needle!) Think also of a couple of young Fijians, driving one late evening on city streets. Suddenly they are chased by a carload of racists. Caught in the dark dead-end street, the youngsters were dragged out of their car and mercilessly beaten by baseball bats. It only stopped, short of actually killing them, by the arrival of another car. Think also of a young Punjabi who was forcibly pulled into a van by strangers while standing at a bus stop one night. With vicious and cold-blooded savagery four men and a woman tortured the man for hours, tore up his clothes and turban, took him to a house, and hung him for about two hours by tying his hair with something on the ceiling. Later, they even sheared his hair, before the man was able to somehow escape.

One could go on with examples. These indicate not simply racial prejudices or institutional discriminations as we have known for a long time; alarmingly, these illustrations suggest resurgence of organized, calculated violence against visible minority people. Behind these acts, regardless of how isolated and incidental they may appear, its a new level of hate and vengeance. And this new situation calls for an entirely new kind of organized response and effort. Simple, traditional, mechanistic, law-and-order approaches will not be sufficient. I will return to this later. What I wish to emphasize at this time is the fact that all this growth in racial attacks, quantitative as well as qualitative, is taking place despite the proclaimed aim of making Canada a multicultural society, despite the many provisions in the Canadian Criminal Code, despite the existence of Human Rights Commissions. Obviously, the existing proclamations and mechanisms have proved to be inadequate.

Take for example even the new Civil Rights Protection Act of British Columbia. This Act was passed to cope with the growth of racism and the KKK in the province, after some 16,000 British Columbians submitted a petition to the government, demanding a legal ban on the KKK, and after dozens of community organizations representing thousands and thousands of people in the Chinese, Punjabi, Fijian, Muslim, Pakistani, Native Indian, Black and other communities made similar demands. What has been the effect of this Act? Not only has the Klan increased its activities in the area, its leaders are reportedly openly bragging that the Act is entirely toothless and cannot stop them from opening a shop in the province. Obviously, something more and drastic will have to be done.

And it will have to be done soon. Time is fast running out. And with this, I wish to submit, the patience of the visible minorities too is running out. The humiliation, indignity, anxiety, insecurity, anger I talked about earlier which people feel are real. The natural and rightful desire to defend one's dignity, life and property could easily lead to collective self-defence systems on the part of affected communities. And we all know what happens then. The lessons from Miami, from Leeds, Brixton, Liverpool, and many other places cannot be ignored.

Before I try to suggest what that something has to be, let us take a few moments to try to understand the dynamics lying behind the recent upsurge in racism across Canada. I use the words "recent upsurge" purposely, because it is necessary to keep in mind that racism is not something new in Canada, despite what some of us may wish to believe. It hasn't been very subtle either - in the form of only prejudiced attitudes and institutional discriminations. At times in Canadian history, racism has in fact taken almost genocidal proportions. Nor would it do any good to assume that we could completely eliminate racism from Canada. That may require undoing a whole lot of what has been done in several hundred years of history, things which in fact promoted notions of racial superiority and bigotry. All this is clearly outside the purview of this symposium. So let me be modest, specific, and try to understand only the phenomenon of the recent racist upsurge.

It is almost commonplace to maintain that difficult economic times lead to overt racism. The obvious truism in this hardly needs stressing. When jobs are scarce with growing unemployment and insecurities, visible minorities, particularly the recent immigrants, become the easy scapegoats. Maybe, then, the Ministry of State for Multiculturalism should put pressure on the government to do something about the job situation. But joking apart, what needs to be stressed here is that difficult economic times do not have to automatically lead to racial hostilities. Such times only provide the fertile soil for racism, in the sense that the people, ordinary people, are more vulnerable to racial ideology. They are more likely to act out their frustrations on what they are led to believe, wrongly, as the cause of their problems. What I am suggesting is that difficult economic times provide a fertile soil not so much for overt racism, but for racist ideology, racist bigotary. It is not the ordinary people who are responsible for the scapegoats. It is done for them in the form of dissemination of a racist ideology.

This dissemination of a racist ideology, this scapegoating for the society's ills, can take place both in subtle, indirect as well as direct, organized forms. The unorganized, subtle dissemination comes, often, through newspapers and other forms of media, from government policies and pronouncements, and from other positions of power and influence. When the W-5 program of a major TV network, for example, tried to put across the mistaken notion that our universities were being taken over by "foreign, Chinese" students, it in effect was disseminating a racist ideology, which could in turn lead to overt racist acts towards the people of Chinese origin. Whether or not present government immigration policies toward Third World people are liberal is something which can be debated, but when an important newspaper columnist like Doug Collins again and again blames the "liberal immigration policies" for all the ills of society, it is bound to generate racial intolerance and hostility among ordinary people. Allow me to say this too that when Gallup pollsters go from house to house, backed with the authority of a minister of the Government of Canada and confront ordinary people with such highly suggestive and high leading statements, such as: "Riots and violence increase when non-Whites are let into a country," or "I would support organizations that worked towards preserving Canada," or "I don't mind non-Whites but I'd rather see them back in their own country." When ordinary Canadian people are confronted by such statements, particularly when these statements are backed by the authority of a federal minister, they are being influenced in the very process of answering them. Yes, the very process of answering such statements is forcing ordinary people to think in racist terms. And in this sense, such polls become vehicles of disseminating racist ideology.

One could think of many more examples of the subtle, unorganized, maybe even unintentional, forms of disseminating racist thinking. But let me turn to the other, organized forms. Here at least the law makers of the country could get more tangible guidance from this symposium.

It is not a mere coincidence that the recent growth in racial attack on visible minorities has gone hand in hand with a growth in the organized strength of organizations like the KKK. The parallel development is compelling. Exploiting the worsening employment situation, like a fertile soil, the Klan is able to turn more and more ordinary, though frustrated people, into racial bigots. In fact, it is not even necessary that people formally join the Klan. It is also not even necessary that the Klan itself has to go out and lynch and shoot people. Their message of hate, their ideology of racial superiority, their concept of all-White Canada as a solution to the Canadian problems - all this, when allowed free dissemination - is sufficient to turn many simple folk into violent racists.

What I am suggesting is that if we wish to prevent the growth of racism in this society, we have to prevent the dissemination of racial ideology, among of course other things. But prevention of the dissemination of racial ideology has to acquire an important place on the agenda. There is an important lesson to be learnt by doing a bit of cross-cultural comparison. We all like to believe, for example, that overt racial wars could take place in societies like Britain, but not here. Underlying all this is also a conceited smugness that somehow Canadians are a bit better people, more tolerant people. I think we should give up this ethnocentricity, this smugness. A great many socio-economic and historical factors would have to be taken into account to make a proper comparison. But let me suggest one crucial difference. I am not absolutely certain how valid it is, but it is at least worth pondering upon. Britain's racial climate is different because Britain has allowed for many years openly racist and White supremacist organizations like the National Front to disseminate their ideology and even to act as a political party, propagating racism on election platforms. Why go as far as Britain? Let's do a bit of comparison between Canadian cities like Toronto on the one hand and Vancouver on the other. I have lived in both cities. I have found it much safer, as a person belonging to a visible minority and as a woman too, to walk on the streets and in parks of Vancouver (at least until a year or so ago) than in Toronto. I know that members of the South Asian community living in Toronto think twice before they call the Metro police to lodge any complaint. I haven't known it to be so in Vancouver, not till now anyway. Am I to believe that the people living in Vancouver are better Canadians than those in Toronto? I wouldn't. The crucial difference is that in Toronto, organized racist forces like the Western Guard and the Nationalist Party have been allowed to operate and freely disseminate their ideology, and nothing of this kind so far has existed in Vancouver.

Let me now come to suggest to this symposium, and through it to the Government of Canada, what I think needs to be done to deal with a rapidly worsening situation.

Let me state at the outset that law itself is not adequate to deal with the problem of racism. A whole variety of educational programs affecting public opinion, and other measures to influence people's attitudes toward each other and to overcome their economic insecurities, would have to be undertaken. Yet, law and legal framework do have an important role to play. It is the laws of a society which demonstrate its collective conscience, its values, and its determination to deal with a given problem in a definitive manner. It is also true that peace and harmonious inter-community relations cannot be legislated. What can be legislated though is a society's determination that it will not tolerate any violation of human dignity and human life, based upon racial discrimination and racial bigotry. It is through its laws and its legal institutions that a society clearly demonstrates this determination.

As pointed out before, and also by the many other speakers, there have been laws on the statutes specifically dealing with the problems of discrimination. But it has also been noted that they have not been adequate. I am not a lawyer and do not quite know the intricacies involved in this sphere.

Distinguished and competent experts in the field have already made their contributions to this symposium, and many more will be doing so in other forums. As a lay person, but as someone who is sensitive to the problem and who can claim to speak on behalf of the affected, victimized communities, I would like to state categorically that what we need urgently in Canada today first and foremost is to legally make it impossible for the overtly racist organizations and their ideology to operate in the society. If you really want to prevent racial bigotry from spreading, if you really want to prevent widespread racial riots from taking place, if you really want to realize the professed Canadian dream of multiculturalism, I do not think you have any choice in the matter. And I do not think that you have much time. You must legislate organizations like the Klan out of existence.

I really do not understand what are the difficulties involved in taking such an action. Didn't Canada support, as a signatory, the declaration of the International Convention on the Elimination of all forms of Racial Discrimination, of 1965? Or was it some kind of a formalistic gesture to look good in the international community? I quote Article 4 of this Convention:

> State parties condemn all organizations which are based on ideas... of superiority of one race... or which attempt to justify or promote racial hatred and discrimination... and (a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence... against any race... or person of another color... (b) shall declare illegal and prohibit organizations and also organized and all other propaganda activities which promote and incite racial discrimination.

I would like to believe that when Canada became a signatory to this Convention, it sincerely believed in it. Even if it didn't at that time, the present circumstances are compelling enough to do so now. I leave the final legal aspects to be looked after by the lawyers and by the law-makers. But it should be possible to make sure that organizations like the KKK, the Western Guard, and their like are not allowed to have legal rights to open offices, to have access to postal services, to be able to use the telephone system, to be able to disseminate their ideas through public meetings, lectures, leaflets, media, etc. People across the country, particularly the ethnic minorities, are organizing the citizens' campaign demanding minority rights.

To deny organizations like the KKK the democratic right to exist is to in fact enforce democracy. I do not wish to rehash the many arguments constantly made on this issue. The John McAlpine Report (November 1981), among many others, neatly sums up those arguments, including opinions of many judges and civil libertarians.

How one can legislate against the many subtle and unorganized forms of dissemination of racial ideology, I do not know. Let the legal minds ponder over it. Strengthening of public opinion, and a close watch over such matters by the human rights personnel should at least be attempted.

The second area which needs urgent improvements is the one of law enforcement.

Regardless of how good the laws are, they become ineffective if they remain unenforced, or if their enforcement is slow and sluggish. The legal and law-enforcement agencies in this society have to go out of their way, if necessary, to win the confidence of the visible minorities. It has been rather lacking, and gradually becoming more so. The other participants in this symposium have gone into the many details of this issue and have also suggested many concrete remedies. There is no need to repeat those. Let the law-makers of this society take a serious note of these suggestions. I wish to emphasize one particular aspect. There has been a rather disturbing tendency on the part of many police departments to either not recognize the racial overtones of particular crimes or to underplay them. Whether it is some form of complicity which lies behind these attitudes or something else I do not know. Whatever it may be, the attitude itself does not help. Even if the complicity was initially not there, the very act of denying the existence of racism leads to such a complicity.

It is not simply a matter of recognizing that there is racism behind a certain crime or action. The whole approach of dealing with racially motivated actions has to undergo a drastic change. A strictly technical, mechanistic, law-and-order approach is not only not sufficient, it does not help in curbing the growth of racism in the society. For example, when a family repeatedly experiences stones being thrown at their windows, it could be treated as a simple case of vandalism. On the other hand if it were treated differently, as a racially motivated act, there is a stronger likelihood eventually the stone would not turn into a firebomb. It is worth pointing out that the recently concluded jury trials of three people charged with the murder of Khushpal Gill treated the whole case as if it were an ordinary case of murder. The whole judicial process dealt with questions as to whether it was a case of manslaughter, first degree, or second degree. Given the present legal framework, I guess that is what could be done. But what about the racial aspect of the murder? Even as the case clearly established that Gill would not have been killed if he were not a member of a visible minority, this aspect remained unemphasized. In what manner does the justice meted out help in curbing further growth of racist attacks and racially motivated murders?

Here again, many more examples could be given. But the point should be clear. The law enforcement and judicial process has to go through a thorough reorientation in dealing with issues of racism.

Let me try to sum up.

Dealing with the problem of growing racism will require efforts on many fronts. It will require long-range as well as immediate remedies. I am fully aware that law cannot be the sole solution. Education provides affirmative programs in general and especially in the law enforcement agencies. These should be vigorously pursued. Our institutions have to reflect the promises of Multiculturalism. They can no longer justify the monolithic character of their composition and the value, which such a composition represents. After attending this symposium for two days, I have come to the realization that the issue has to be specific and the recommendations need the specificity of the context and time.

Whatever has been discussed is very meaningful indeed, and been often discussed. We will find many forums and rallies to express our concerns and views; but what is needed today is concrete resolutions vis-à-vis law and law-enforcement agencies of our country. We have debated enough on the theoretical aspects of racism and how law cannot eradicate racism altogether. We all understand that. But we have to begin somewhere. The Multiculturalism Directorate, the Department of Justice and the Human Rights Commission have offered us the symposium to come up with some recommendations. Let's do that now. The time is running out. Let's be positive. Let's try. Let's not throw our arms in frustration and go home thinking nothing has been achieved and nothing can be done. Those who have professed against changes in law, have to realize they will be perceived as champions of the status quo. The grassroots people we are representing here want changes, want to have recourse to law, to have more sensitive enforcement agencies to react promptly to racist incidents. With that concern in mind, I have come up with a completely new paper this morning: focussing essentially on only specific issues, I repeat the concrete suggestions, once again in addition to the other valuable suggestions made in this panel by my colleagues:

- Preventing Klan-like organizations to acquire any legitimacy and rights: it's a positive step.

- A very drastic and thorough change in the orientation of the law-enforcement agencies.

I hope the workshops will come up with more precise formulations.

Race Relations and the Law

by

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"In reviewing the responsibility of legislators to respond immediately to significant increases in racist incidents, three areas should be looked at in order to determine the adequacy of the criminal law---hate literature, hate organizations and racism motivated offences. It is perceived that these are areas where the law is now inadequate and short-term immediate solutions are required."

All across this country racism has reached levels not seen since the before the advent of World War II. Briefly scanning incidents in every region one sees that no part of this country remains untouched by this vicious disease.

In the Atlantic Provinces an attempt to establish a Klu Klux Klan outlet in New Brunswick met with a measure of success while Blacks complained of incidents involving desecration of their property and motor vehicles.

In Quebec the Haitian Black community complains of an inability to integrate into the Quebec community although they are Francophone, leaving one to surmise an underlying current of racism appears to be the problem.

In Ontario incidents involving the South Asian community have been reported, particularly an increase in tensions involving the Sikh community. In Toronto alone concerns were raised about the rise of such organizations as the Klu Klux Klan and the Canadian Nazi Party. Protests came forward from the Black community regarding the treatment of their students in Waterloo. In the universities there was also noted a marked increase of discrimination against oriental students. In Northwestern Ontario the discrimination which the Native Indian population has felt through the years has not abated.

Across the West reports of racist incidents have streamed in. In Winnipeg, considered the most multicultural of Canadian cities, the newspapers have reported incidents involving the Sikh community where homes have been desecrated, the Filipino community where children have been involved in fights at schools, the Native Indian community, and as well a resurgence of anti-semitism directed at the Jewish community. Similar reports, particularly involving the Southeast Asian community, have been received from Saskatchewan and Alberta. A high degree of incidents have been reported out of Calgary.

In British Columbia a bitter triangle of hate is developing between the Southeast Asian, particularly the Sikh community, the Native Indian community and the White community.

In Canada the degree of racist incidents generally seems to be levelled at those groups we term "visible minorities." A notable exception is the Jewish community which has reported an increase both in anti-semitic acts of violence as well as hate literature.

In the recent Gallup Poll commissioned by the Minister of State for Multiculturalism concern must be felt about Canadians' response to the following statements:

> I would support organizations that worked towards preserving Canada for Whites only.

This statement showed that 15 per cent of people polled right across Canada strongly supported this thought, while 22 per cent (more than one person in five) either strongly supported the thought or was leaning towards it.

> I would limit non-White immigration and those who were let in would have to prove themselves before they were entitled to government supported services.

Thirty-four per cent of Canadians polled (more than one person in three) strongly supported this statement, while 48 per cent (almost one person in two) either strongly supported or was leaning towards such a thought.

The poll results show that there is a high degree of either out-and-out racism or a tendency to racism amongst Canadians. On the average the poll showed a hard core of racism in 10 per cent of the population. The purpose of this paper is not to explore the reasons for such a blight in this country, but rather to discuss the responsibilities of the lawmakers at the federal, provincial and local levels to deal with such a phenomenon once it is recognized. In developing this paper it is proposed to look at three general areas: the criminal law, the criminal justice system and civil, non-legal and community responses.

It should be pointed out that questions raised and the solutions proposed are not intended to be put forward as a be-all and end-all to this problem by any stretch of the imagination. Certainly underlying causes of racism should be analyzed and programs initiated directed specifically at reversing these causes. However, topics discussed in this paper are put forward on the presumption that once a government recognizes that a racism problem exists in this country it has a duty to take a strong stand against it by initiating legislation that will show the population how seriously the legislators view the problem.

Criminal Law

In reviewing the responsibility of legislators to respond immediately to significant increases in racist incidents, three areas should be looked at in order to determine the adequacy of the criminal law, hate literature, hate organizations and racism motivated offences. It is perceived that these are areas where the law presently is inadequate and short-term immediate solutions are required.

. Hate Literature

On the issue of hate literature, Section 281.2 of the Criminal Code of Canada provides as follows:

> 281.2(1) Every one who, by communicating statements in any public place, incites hatred against any identifiable group where such incitement is likely to lead to a breach of the peace, is guilty of

a) an indictable offence and is liable to imprisonment for two years; or

b) an offence punishable on summary conviction.

(2) Every one who, by communicating statements, other than in private conversation, wilfully promotes hatred against any identifiable group is guilty of

a) an indictable offence and is liable to imprisonment for two years; or

b) an offence punishable on summary conviction.

(3) No person shall be convicted of an offence under subsection (2)

a) if he establishes that the statements communicated were true;

b) if, in good faith, he expressed or attempted to establish by argument an opinion upon a religious subject;

c) if the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds he believed them to be true; or

d) if, in good faith, he intended to point out, for the purpose of removal, matters producing or tending to produce feelings of hatred towards an identifiable group in Canada.

(4) Where a person is convicted of an offence under section 281.1 or subsection (1) or (2) of this section, anything by means of or in relation to which the offence was committed, upon such conviction, may, in addition to any other punishment imposed, be ordered by the presiding magistrate or judge to be forfeited to Her Majesty in right of the province in which that person is convicted, for disposal as the Attorney General may direct.

(5) Subsections 181(6) and (7) apply mutatis mutandis to section 281.1 or subsection (1) or (2) of this section.

> (6) No proceeding for an offence under subsection (2) shall be instituted without the consent of the Attorney General.
>
> (7) In this section
>
> "communicating" includes communicating by telephone, broadcasting or other audible or visible means;
>
> "identifiable group" has the same meaning as it has in section 281.1;
>
> "public place" includes any place to which the public have access as of right or by invitation, express or implied;
>
> "statements" includes words spoken or written or recorded electronically or electromagnetically or otherwise, and gestures, signs or other visible representations."

It seems odd that although this section has been in the Criminal Code for over 12 years convictions are few and the number of prosecutions have been minimal. This phenomenon exists in spite of the fact that Canada has been virtually flooded with all forms of hate literature in recent years.

As a general rule, hate literature has been divided into three categories: direct hate involving the blatant outpouring of hate to an identifiable group, most commonly the Black and Jewish communites; indirect hate involving planting stories in newspapers or circulating letters which, while not directly defaming a group is designed to increase tensions in the community against an identifiable group (such as direct-mail campaigns programmed to lead the community to believe that it is going to experience a large influx of South Asian immigrants in a short period of time); and the distortion of historical facts, most commonly the denial of the occurence of the Holocaust. Unfortunately, although Canada does have the Criminal Code section indicated above, it has gained the reputation as being one of the world's worst offenders in distributing hate literature. Not only has such literature been circulated in Canada but this country is one of the largest mailing centres of hate literature to the rest of the world.

Under the present definition of hate literature in our Code, the distortion of an historical fact is not considered an offence. It is however interesting to note that such an act is an offence in European countries, such as West Germany and France. As Canada is one of the largest sources of such literature, it is recommended that the Criminal Code be amended to include a distortion of an historical fact as an offence. It is also recommended that it be made an offence to export hate literature from Canada to other countries.

It is believed that one of the reasons why there are not a large number of prosecutions of hate literature is that the definition of such literature as defined by the Criminal Code is too restrictive to encompass various types of propaganda found in Canada today. It is therefore recommended that the definition of hate literature be expanded to include any form of communication designed to increase tensions against an identifiable group.

Having a view firstly to the reluctance of the Crown to prosecute offences under this section and also to those few reported cases involving this section, it is further recommended that firstly, the word "willfully" be deleted from subsection 2, and that subsection 3(b), (c) be deleted as well.

Another reason for the lack of prosecutions of hate literature appears to be the requirement that the Attorney General of the province must personally sign a fiat to the prosecution. The rationale for the original inclusion of such a clause was that it would guard freedom of speech. However, in practice what has occurred is that Attorneys General have become reluctant to sign such fiats no matter how blatant the literature may be. It is suggested that with the existence of the present Bill of Rights and the coming into being of the proposed Charter of Rights that there is no need for there to be an additional protection in the Criminal Code for freedom of speech. It seems odd that our legislators would include hate literature by reason of its need for an Attorney General fiat in the same category as an offence such as streaking, which also requires a fiat. One must only wonder as to what freedom is being protected when that requirement was affixed to that section of the Code. It is therefore recommended that the requirement for the Attorney General fiat be removed completely with respect to prosecutions for hate literature.

One can only guess as to how the proposed Charter of Rights will affect hate literature prosecutions. It can only be hoped that the Canadian experience will not prove similar to that of the American whereby any blatant hate outpouring is allowed in the name of freedom of speech.

In addition, Canada should be mindful of its treaty obligations as set out in Article 20 of the International Convenant and Civil and Political Rights 1966 passed by the United Nations. Article 20(2) provides as follows:

> Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

It is suggested that the present Criminal Code does not fulfil Canada's obligations as set out in Article 20.

- **Hate Organizations**

A number of organizations have sprung up across the country. Their prime motivation is the promotion of hate against an identifiable group, most commonly Jews, Blacks and South Asians. First described in the Toronto area, there is evidence of such groups forming under the auspices of the Klu Klux Klan, the Canadian Nazi Party, as well as in the name of revivalist religion.

While there is clearly a need to outlaw such groups it is suggested that attempts to outlaw the formation of these groups could easily be frustrated. It is easy for a group to disband and reform under another name hiding under any number of corporate shells which would be made available to it. It is suggested that a definition be formulated that would outlaw the activity of the group as opposed to the group itself. For instance, the Criminal Code could be amended to make it an offence to form an organization which advocates inter-group hostility or any distinction, exclusion, restriction or preference based on race, color, religion, descent, national origin or ethnic origin which may lead to violence. With such a definition, the moment any group commenced practicing any racist activity a prosecution could be levelled at all members of that group.

- **Racism Motivated Offences**

The Criminal Code contains hundreds of offences created by the Parliament of Canada. Any one of these offences can be committed in the name of racism. A question raised is that if a court makes a determination that the motive for any crime which has been prosecuted before that court is racism, on conviction should the judge's discretion as to sentence be taken away and an automatic jail term imposed?

This concept is not a new one to the criminal law. Already individuals who are drug smugglers, dangerous sexual offenders, or second offenders in drinking and driving offences face automatic jail terms. Why shouldn't racism receive similar treatment?

It is therefore recommended that the Criminal Code of Canada be amended to provide that wherever a court finds that racism is the motivation of an offence and the accused is found guilty, then that accused must automatically be incarcerated.

Probably the largest group involved in racist-linked incidents in Canada today are juveniles. The Young Offenders Act which legislates the criminal justice system for juveniles has been found to be inadequate in dealing with these offenders. Major amendments to the Young Offenders Act are before Parliament as this paper in being written. It is recommended that the Young Offenders Act be amended to broaden the judge's discretion in sentencing where a juvenile is found to have committed a racially motivated offence. Where a juvenile is found by a court to have been motivated by racism in committing an offence, the court's discretion to have that juvenile raised to an adult court for trial should be broadened as well.

Criminal Justice System

When a racist incident occurs the victims of the incident find their first encounter with government bureaucracy through the criminal justice system. It is therefore important that this bureaucracy be examined in the three stages of the criminal justice system to see where improvements can be made to prevent misunderstandings of a racist-like act appearing to be emanating from government itself. The bureaucracy will be discussed in three sections, the police, the courts, and corrections.

• Police

A story from British Columbia illustrates how police officers can be embroiled in controversy for not properly handling a racist incident. A group of Sikhs complained to the police in Vancouver that their temple was being desecrated nightly by a group of vandals. The police advised the Sikhs they could not charge the offenders until they were apprehended while committing the act. The Sikhs were advised to catch the offenders while they were desecrating the temple and the police officers would be pleased to come down and lay the charges.

A trap was set and when the offenders came along and started to desecrate a temple they were set upon by the Sikhs and held until the police came. When the police arrived, however, they let the offenders go free and charged the Sikhs with assault. The case had to reach an appeal stage before the Sikhs were acquitted.

An incident such as this can easily occur where a police force does not take pains to instruct its officers of the multicultural reality of the country and place emphasis on the groups with which they might most often interact. In addition, if a police force allows itself to become too uniracial, chances of misunderstanding between police and ethnic minorities will increase.

One successful experiment can be seen with the Toronto Metropolitan Police Force which some years ago created the Ethnic Squad. This squad was formed by specifically recruiting officers from the ethnic communities in Toronto with which the police had difficulty communicating, such as immigrant Italians, Southeast Asians, and Chinese. When an incident with racial overtones occurred, members of the Ethnic Squad who could most easily interface with the community involved would be dispatched immediately to meet with the complainants. They would not only take particulars of the complaint but also report back to that community on the progress of the investigation and eventual charges.

Concurrently with the Ethnic Squad concept the Metropolitan Toronto Police began an active campaign to recruit officers from visible minority communities, a campaign that has met with a great degree of success.

As a result, Toronto is one city where incidents of a racist nature appear to be on the decline instead of the increase.

It is therefore recommended that first, all police forces remove restrictions on recruitment that would hinder certain ethnic minorities from becoming police officers (such as height and weight restrictions). It is further recommended that affirmative action laws be launched by the appropriate levels of government to ensure that the pluralistic nature of the community's population is reflected in its police forces.

In addition, it is strongly recommended that all levels of government participate in multicultural education programs directed at the police forces so that police officers will better understand the ethnic minority communities with which they deal and will not be so reluctant to enforce laws dealing with racism.

Complaints have been received from the Arab community that police forces were investigating their members, opening files in the name of looking for terrorists simply because the member was of Arab descent. It is important that our police forces not only enforce the law but appear to be enforcing it in an unbiased manner. It is therefore recommended that independent citizens' review committees be established to investigate complaints regarding police forces, particularly complaints alleging racist actions by police officers. In addition, it is recommended that freedom of information laws be enacted to allow a citizen access to his or her file at a police agency to determine whether the file was opened solely because of that citizen's membership of an identifiable racial group.

• Courts

After encountering the police, the second bureaucracy an individual would experience in the prosecution of a racial incident would be the courts. As many complainants in a racial incident are immigrants from other countries, especially countries where the justice system is questionable, it is important that steps be taken to ensure that our courts both respect and understand the different customs of individuals who may come before the courts.

For example, with the increase of immigration to Canada of those whose religion is neither Jewish nor Christian, the system of taking oaths must be carefully reviewed. Also, dealing with immigrants, or for that matter, our Native Indians and Inuits, steps must be taken by the courts to ensure that proper translation facilities are available.

As visible minorities enter the legal field as practitioners, they begin to form part of the pool from which judicial appointments are drawn. It is therefore recommended that the appropriate levels of government may wish to seriously consider an affirmative action program in the appointment of judges, particularly those who will be adjudicating in areas where there are a large number of visible minorities.

Judges themselves are leaders in the community. Therefore, if they perceive racism in cases which come before them they must not be reluctant to identify such racism in their judgements and speak out against it.

• Corrections

After interaction with the courts the final bureaucratic system in the criminal justice system is the correctional system. This system is broken into two parts, the prisons and the probationary system. Although there are two entities, the problems from a racism point of view and the suggested solutions are the same.

It is important that both prison and probation officers be trained to both recognize and respect religious and other practices peculiar to individuals from identifiable ethnic groups. It was of concern that we learned of a paper circulating amongst Western Canadian probation officers which, in describing the resurgence of traditional spiritual beliefs in the Native Indian community, termed it "paganism." This type of incident illustrates the importance of education and sensitization for prison and probation officers.

Again, the government should carefully consider the introduction of affirmative action programs in both the courts and police forces where it is perceived that the officers in these systems do not accurately reflect the multicultural mix of the communities in which they are serving.

In support of affirmative action programs it is important that surveys be taken within the three groups described to better ascertain their ethnic makeup. It is understood that as a matter of policy these groups cannot at this point undertake such surveys as they may be thought to be discriminatory. It is suggested that in support of affirmative action programs restrictions on these types of surveys be removed.

Civil, Non-Legal and Community Responses

• Human Rights Commission

There now exists a federal Human Rights Commission which has the power to deal with complaints in areas of federal jurisdiction. Where racist incidents occur on a provincial level, in most provinces one can go to provincial Human Rights Commissions. Difficulties arise, however, because of questions of whether incidents of racism are in the federal or provincial jurisdiction. More importantly, certain provincial Human Rights Commissions appear to have broader powers than others. It is recommended that the federal government, in view of the proposed universal Charter of

Rights, take steps to confer with all provinces in order to establish an amalgamation of all Human Rights Commissions into one body, all having the same jurisdiction and powers.

It is further recommended that the number of human rights officers be increased to provide better access to the public, and that their locations be more widely advertized to make it easier for the public to obtain access to these commissions.

- Class Actions and Private Prosecution

Steps have been taken both in Ontario and British Columbia to pass legislation that would allow the prosecution of individuals or groups perceived to be committing racist acts in order to obtain stiff monetary penalties against such individuals or groups. These prosecutions can be brought either by an individual or a class of individuals.

The practicality of such acts is questionable when one considers the high cost of litigation and the enforceability of judgements once obtained, particularly when the actions are brought against organizations that may be nothing more than empty shells created by a racist group. One wonders about the practicality of obtaining a large monetary judgement against that shell when the group can very quickly abandon the name of the organization and simultaneously set up a new organization under a different name but committing the same types of acts.

However, one can think of practical application of such acts that could be successful. It is therefore recommended that such legislation be enacted across the country, leaving the discretion up to the individuals or ethnic groups to decide whether pursuance of a civil action is worth the time, effort and monetary investment involved.

- Educational Incentives

If we are to combat racism effectively, we must do so on a long-term basis by educating our population. We must stress the pluralistic nature of our country and the various customs belonging to those who comprise it. It is recommended that the first target of such educational programs be our police forces. As discussed above, they often have the first encounter with ethnic groups and must be most prepared to deal with them.

A second and equally important target is our schools. It is recommended that all provincial governments begin compulsory multicultural education programs in our schools at the elementary, junior high and high school level. In the long term the education of our youth is where we will have the most positive effect. The practicality of educating adults is the most difficult. Although we can utilize such techniques as direct mailing, radio, TV as well as the printed media, it is questionable whether we will reach those adults who most need such education.

It is therefore important that education on the multicultural reality of Canada be commenced in the schools where by virtue of our compulsory education laws eventually everybody will be reached.

• Mayors' Race Relations Committees

The City of Toronto, in addition to introducing its Ethnic Squad concept, was also the first city in Canada to introduce the concept of a Race Relations Committee at the civic level. This was in direct response to an increase in the level of racial incidents. The Metropolitan Toronto committee was formed with Dr. Dan Hill as its chairman. Shortly afterwards the city of North York formed a similar committee.

Now across Canada there are four Mayors' Race Relations Committees. In addition to the two mentioned above, committees have been formed in Winnipeg and in Vancouver. Although these committees have only just begun work, if the Toronto example is indicative of how racial tensions can be lowered it can be predicted that similar results should soon be seen in these other communities. It is therefore recommended that all major cities take the appropriate steps to form Mayors' Race Relations Committees.

To ensure that these committess have the desired effect on the population from which they will be chosen, it is further recommended that they be given a substantial budget commensurate with the civic responsibility they have undertaken and at the same time be granted certain enforcement powers such as the imposition of fines or the power to recommend prosecutions where their directives are not followed.

• Freedom of Religion

In discussing the issue of racism, religion must also be included. It has been argued that discussions of religion do not have a place in the racism issue as many races can profess one religion. However, it must be recognized that certain races have a religion peculiar to that race, and enfringements on the observances of that religion tend to be viewed as acts of racism. One need only look at historic examples of the Jewish people, the Sikhs, the Moslems - or for that matter even Roman Catholics where at times the observance of their religion has been found to be synonymous with French-Canadians or the Irish - when they were the brunt of racist acts.

As Canada was originally established by people of the Christian faith, a number of laws such as the Lord's Day Act and acts establishing statutory holidays such as Christmas and Easter came into being, forcing those not of the Christian faith to observe holidays foreign to them. In view of the increasingly large number of people in Canada who do not observe the Christian holidays, it is suggested that the Lord's Day Observance Acts, both provincially and federally, be abolished and be replaced by labor statutes that compel employers to grant their employees at least one day off per week. It is further suggested that those laws creating statutory religious holidays such as Christmas Day and Good Friday be abolished and in their place employees should be granted a minimum number of holidays per year of their own choosing that would be treated in the same manner as a statutory holiday. In that way people of the Jewish faith could choose to observe Rosh Hashana and Yom Kippur as their statutory holidays and not have to worry about their employers docking their pay for missing those days at work. Similarly, people of other religions could choose their holidays.

Problems have been brewing for some time between employers and employees following certain religious practices. Some of these are not commonly understood; for example, Sikhs being compelled to wear helmets at work sites when their religious observance requires them to wear turbans; or Muslims requiring a short time to pray at least one day a week during working hours. If the observance of these religious precepts does not create a danger for others and can be easily arranged not to disrupt other workers, these types of conflicts should not occur. It is therefore suggested that both federal and provincial Employment Standards Acts be amended to provide the rules or regulations prohibiting an employer from conflicting with the religious observance of an employee.

Bureaucratic officials, especially police officers, should be trained to recognize religious customs which are only now becoming more noticeable in Canada. It is important that these officials be taught to recognize and respect places of worship so as not to either intentionally or unintentionally violate someone's religious beliefs.

The above suggestions do present a problem where religious concepts conflict with the morals of society, for instance the problems created by Jehovah's Witnesses who have refused blood transfusions either for themselves or for members of their families. In most jurisdictions laws have now been passed which allow the government to interfere with such beliefs where that belief would cause harm to an individual other than the one giving instruction to his or her doctor. Similarly the legislators must take care in broadening religious observance laws to ensure that these laws do not infringe upon the rights of other individuals.

- Racism Through the Media

A major complaint received when discussing organized racism is the undue attention that racist groups such as the Klu Klux Klan and the Nazi Party receive from the media. Because the pronouncements of these groups and the images they project are attention grabbing, the media give them prominence to sell their newspapers or magazines or attract viewers and listeners to their programs. The net effect of such acts is that these groups are given a forum from which they can spread their hate to an audience much larger than they would ever be able to assemble on their own.

Their being allowed prominent space gives racist groups an aura of respectability which they might otherwise never be able to obtain, as well as the chance to attract large numbers of members. Although the media have been requested time and time again not to give such prominence where the prominence is not justified, they have been slow to respond.

It is therefore suggested that in dealing with radio and television stations the CRTC be granted powers to revoke a broadcasting licence if it is shown that a station is giving excessive time or prominence to racist groups.

In dealing with newspapers and magazines, it is suggested that a watchdog board, with powers similar to those of the CRTC, be created to monitor undue prominence being given to racist groups. While freedom of the press is an important concept that should be respected in this country, it should not be used as a device to allow racist groups to manipulate the media. With the advent of the Kent Commission Report the first steps have been taken in this country to show that people are ready to accept laws which will require the media to be responsible to its public.

- Race Relations Officers

The above discussion on interaction with bureaucracies would not be complete without a section dealing with seeking solutions to the problem of complaints being channelled to bureaucracies where perceived acts of racism have occured. Certain government agencies already have race relations officers to whom one can complain of perceived acts of racism and who have the additional function of constantly monitoring the agency they represent to see how it could better interact with the multicultural community of Canada. Police forces were among the first organizations to name such officers; it is recommended that such an officer position be established in all police forces across Canada. It is further recommended that government agencies create a similar classification at the federal, provincial and municipal levels to deal with similar problems.

Finally, when businesses acquire a certain size they develop their own bureaucracy and require guidance on dealing with racism. It is therefore suggested that laws be passed requiring that all private agencies of more than a certain number of employees must have such an officer.

- Confrontation Games

The League for Human Rights of the Canadian B'nai Brith has, with the assistance of a Wintario Grant, created a racism combat program known as the Confrontation Games. This is a program involving video clips of various degrees of perceived racism followed by lengthy discussions as to how those acts are similar to those experienced by the individuals participating in the program in their everyday life. This particular program is geared to educators and has been used successfully in Ontario, Nova Scotia and Manitoba. Plans are now in the making to gear this program to educators right across Western Canada.

It is suggested that given the success of these programs to date government agencies initiate grants that would allow the creation of such Confrontation Games programs for people in all professional walks of life, not just educators.

- Community Meetings and Dialogue

Programs initiated by Mayors' Race Relations Committees and in some communities, the League for Human Rights, are going into areas where racism is perceived and encouraging antagonistic groups to meet together for discussion. The value of such dialogue is immense. It gives participants an opportunity to see those against whom they may have harbored racist thoughts, as individual persons with values and a sense of humanity.

It is therefore recommended that the civic level of government take steps to encourage regular sessions of such encounters in, for example, community centres and schools, hosted by community leaders such as members of the Mayors' Race Relations Committees.

- Affirmative Action Programs

The concept of affirmative action has already been discussed in the section of this paper on police forces, the judiciary and prisons and probation systems. All levels of government have boards and commissions whose members are apointed from the public. It is therefore suggested that to ensure that such appointments reflect the multicultural makeup of Canada and simultaneously change attitudes, thus preventing racism, that affirmative action programs be initiated to ensure adequate representation on such boards and commissions.

In addition, government hiring practices should be reviewed to ensure that at all levels of employment within government bureaucracy people are not being denied positions because of their racial background.

- Antiquated Laws

Finally, in a discussion of where laws in this country can be improved to prevent racism, one must also look at those laws now on our books which are so antiquated as to be racist by their very nature; they should be immediately removed from the law books, whether the laws are being observed or not.

In Quebec, there is still a law which forbids the creation of a Buddhist Temple. This statute was apparently enacted during the Second World War at a time when Japanese-Canadians were being transported to internment camps in Quebec in an effort to discourage "enemy aliens" from remaining in the province. Clearly such a law should now be expunged.

A large number of municipalities still have by-laws which place curfews on members of certain races, such as Native Indians and Blacks.

The fear is not that these laws are being observed today but that if they are still on the books they could provide a tool to someone of racist tendencies who might come into power.

Conclusion

In a very simplistic fashion it has been attempted to review racism and the law in the areas of the criminal law, the criminal justice system and civil, non-legal and other remedies.

The suggestions made in this paper point out areas where needs have been identified for solutions. While the majority of the suggestions entail amendments to the law, and particularly the criminal law, it must again be emphasized that changing the law will not in itself cure the problem of racism. It is hoped that where individuals commit racist acts or have racist feelings, the vast majority are unintentional and come about only because these individuals have not analyzed themselves in an effort to recognize what is happening to them.

The hope is that the various levels of government will take steps as leaders in the community to pass anti-racist laws. By doing so they will encourage the members of their communities to sit down and think about their owns actions towards their fellow man and rethink any actions they may be committing that could be viewed as racist. It is only by example that we can hope to teach our neighbor.

Race and Law

by

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"The Political and Economic Planning Report in Britain suggested that a law is an unequivocal declaration of public policy; a law gives support to those who do not wish to discriminate but who feel compelled to do so by social pressure; a law gives protection and redress to minority groups; a law thus provides for the peaceful and orderly adjustment of grievances and the release of tensions; a law reduces prejudice by discouraging the behavior in which prejudice finds expression."

Introduction

This paper deals with a complicated and controversial subject: the use of law to combat racial discrimination, or to put it more positively, the use of law to promote equality of opportunity and treatment regardless of race. It traces the development of the anti-discrimination laws in the United Kingdom and assesses their impact and limitations. It also argues that laws against racial discrimination cannot succeed in a vacuum; certain pre-conditions are essential if the laws are to succeed.

Background

It is impossible to understand race relations and the development of race relations legislation in the United Kingdom adequately without taking account of the history and legal status of racial minorities in Britain. The strongest influence in government policy in the field of race relations has been fear of white racism and its main instrument, immigration control.

The Jewish refugees, who came to Britain in the 19th Century to escape persecution in Eastern Europe, were aliens as well as a distinct ethnic and religious group. Not surprisingly, the arrival of a relatively small number of Jewish immigrants provoked a profoundly hostile response and led to a blatantly anti-semitic campaign. The campaign largely succeeded with the passage of the Aliens Act 1905 which restricted the inflow of Jewish immigrants. This Act was replaced by the Aliens Restriction Act 1914 which brought more thorough control over the admission, movements and activities of aliens during the war period. The more recent immigration in the '50s from Asia and the Caribbean with an unfamiliar culture and a different skin color, again led to the growth of some racial feeling. Since the labor shortages of the '50s were met by the employment of immigrants from the New Commonwealth and the demand for unskilled and semi-skilled labor exceeded the supply, resistance from local labor was minimal. Consequently the growth of racial feeling in the '50s was both ignored and condemned. However, in the '60s the existence of a problem was reluctantly recognized and, echoing earlier history, the initial goverment response was entirely defensive and negative. In 1962 the Commonwealth Immigrants Act was passed with the aim of limiting further Black immigration. Since that date public attitudes have become increasingly ambivalent. Later the Commonwealth Immigrants Act 1968 withdrew, from United Kingdom passport holders who lacked a 'close connection' with the United Kingdom, the rights of entry and settlement. 'Close connection' was defined as birth in the United Kingdom or descent from a parent or grandparent born in the United Kingdom, or of naturalization, or registration in the United Kingdom. The Act was introduced and rushed through Parliament in three days. The 'close connection' device was explicitly designed to ensure that White settlers in East Africa retained their rights of entry to Britain. Subsequently the Immigration Act 1971 replaced the Commonwealth Immigrants Act of 1962 and 1968. The 1971 Act provides the framework of the current law on the control of admissions to Britain. It only gives the 'right of abode' in Britain to those it defines as 'patrial.' Those most affected by this are Black members of the New Commonwealth who do not have parents or grandparents born in Britain.

It is now conventional wisdom that Britain is too small and overcrowded to absorb fresh newcomers - unless they are White. At the same time it is also accepted that racial discrimination is economically wasteful, socially divisive, harmful to international relations or morally wrong. The approach of successive governments, therefore, has been that Blacks from the New Commonwealth should be excluded but those who are here should be treated equally. The more obvious conclusion which has generally been drawn is that if Black immigration poses a threat so does the Black minority living in Britain. The law, therefore has two faces - one negative and one positive, but the hostile expression of British immigration laws casts doubt upon the race relations laws.

The context within which our anti-discrimination laws have developed is therefore important and it is worth underlining that if immigration laws are racially discriminatory in their aim and effect, it becomes difficult to persuade employers, workers and others to treat people equally regardless of race. If the nationality laws offer a pseudo-citizenship imposing the obligations of allegiance and loyalty to the British Crown upon a group of citizens, while denying to them, as 'non-patrials' or 'non-belongers' the same rights as their fellow citizens, even the wisest and most vigorous policies of racial equality are likely to lack credibility. Yet that is precisely what the present situation is and it must be stated at the outset that the effectiveness of the race relations legislation has been impaired by the tensions and contradictions between them and immigration and nationality laws.

Race Relations Legislation and the Idea of Equality

The race relations legislation was passed despite powerful opposition and with little public support. The adoption of a law actively to promote equality represented a radical departure from the traditional neutrality and passivity of the British legal system. Britain stands alone among advanced societies in having no written constitution or Bill of Rights to guarantee the equal protection of the law. The race relations legislation was a significant step in that direction, an attempt to influence social behavior and attitudes by a statutory declaration that everyone was henceforth to be treated on the basis of individual merit, irrespective of race or color and to provide an effective legal remedy for the most unfair and degrading type of discrimination. The radical nature of the race relations legislation law is in the practical application of the law to a wide range of situations in which discrimination had hitherto been regarded as unavoidable. The legislation required rational and objective standards in all situations like recruitment, promotion, sale of houses and delivery of services.

The conflicting arguments about the use of law to combat racial discrimination reflected deep moral and intellectual differences about the idea of racial equality, the nature of human beings and their social behavior, the implications of these matters for government policies, the proper limits to be placed on law making and the best choice of legislative technique for dealing effectively with problems of discrimination. The outcome of these different arguments provides the yardstick against which the successive race relations acts may be evaluated.

The idea of equality of man is that men are different in innumerable respects, but for the purposes of government and of political representation they must be regarded as equal. Their inequalities are not relevant for these purposes. This perception of the fundamental equality of men as men despite the manifold differences between individuals lies at the heart of liberal and democratic thought in the West. The second source of the idea of racial equality and, conversely, of the morally unacceptable nature of racial discrimination, derives from the imperative of a modern industrial society. The rise of industrial urban society has created ever-increasing demand for a skilled and mobile working population with widely differing and changing functions. It has generated the need for careers to be open to all with talent. And so, equality of opportunity, based on industrial merit has been transformed from a moral ideal into an economic and social necessity. Thirdly, this process of industralization has been accompanied by a powerful belief in the malleability of man. The unequal characteristics of human beings are seen not as a result of innate inferiority or superiority but of the unequal environments into which they are born and must live. If the inequalities in their environments are removed, people will be able to fulfill their real potential. Therefore the idea of equality makes it similarly impermissible to reject people solely because they were born abroad or are descended from foreign parents or belong to a particular cultural group.

The notion of cultural superiority is no more defensive than the idea of racial superiority. Cultures are simply different. What this has come to imply is not merely that judgements of superiority and inferiority are inappropriate when dealing with cultural differences but more positively that, in a plural society, cultural differences (unless they are seriously dysfunctional) have to be accorded equality of respect. Moreover, an international context, in which societies with cultures very different from those of Western Europe and North America, have acquired political power, and the changing nature of the North-South dialogue[1] makes such respect an essential requirement of modern life. In a culturally plural society, equality of opportunity is too narrow an objective unless it is accompanied by equality of respect for the different cultures of which that society consists. It was this complex of ideas which lay behind Roy Jenkins' observations that he did not regard 'racial integration' as meaning:

> the loss by immigrants of their own national characteristics and culture. I do not think that we need in

> this country a 'melting pot' which will turn everybody out in a common mould, as one of a series of carbon copies of someone's misplaced vision of the stereotyped Englishmen. I define integration, therefore, not as a flattening process of assimilation but as equal opportunity accompanied by cultural diversity in an atmosphere of mutual tolerance.

Fourthly, people of a particular national origin or members of a particular cultural group may be excluded from opportunities as an indirect result of their origins or cultural characteristics, without being the victims of any deliberately unfair discrimination. For example, proficiency in the English language or knowledge of local geography may be relevant qualifications for certain types of employment or length of residence in a locality for eligibility to public housing. Some of these requirements may be objectionable on grounds other than racial discrimination. An 'aptitude' test might be an unnecessarily restrictive obstacle in the sense that it did not measure the objective requirement for a particular job. If it becomes apparent on closer scrutiny that certain qualifications in practice operate more harshly against minorities than against the majority it will be unfair to insist on such qualifications in their existing form, unless they can be independently justified.

Fifthly, there is one further and more radical element in the idea of equality, that is, the notion of equality of opportunity. This requires not merely that there should be no exclusion from access to jobs, houses or goods on grounds other than those which are appropriate or rational for the provision in question, but that the grounds considered appropriate for the job, house or goods should themselves be such that people from all sections of society have an equal chance of satisfying them. For example, if as the result of decades of racial discrimination or other factors in education, housing and employment, members of a racial minority are poorly trained, housed and paid, it is not sufficient to remove the existing racially discriminatory barriers and to proclaim that henceforth opportunities will be available to all on the basis of open competition. Equality of opportunity will not then have been achieved because, although no one will be excluded merely for belonging to that minority, a causal connection will remain between belonging to a minority and being impoverished or uneducated. Members of the minority will lack economic, educational and psychological resources needed to participate on equal terms in competitions for the opportunity in question. If they are treated unequally on the grounds that they are poor and uneducated, the justification for unequal treatment turns out to depend on contingent social inequalities. In such circumstances 'there is a necessary pressure to equal up the conditions by more far reaching reforms so that minorities will more genuinely enjoy equality of opportunity.'[2] This is the intellectual justification for providing special resources for those in special need since their unequal environment contributes to inequality. Because of past failure to ensure equality of opportunity regardless of race, society can move towards genuine equality only by changing unequal environments. The extent to which this becomes necessary to do is the measure of the extent to which the idea of equality has been previously ignored.

The arguments about the role of legislation to combat racial discrimination, therefore, originated with the idea of equality discussed above. However, the practical problems of racial discrimination were obviously of more immediate importance to these arguments.

The Race Relations Act 1965 and the Extent of Discrimination

The first attempt to legislate against racial discrimination in public places in Britain was made in a private member's Bill introduced in 1951 by a Labour MP, Mr. Reginald (later Lord) Sorenson. In the years between 1952 and 1964 Lord Brockway made 10 attempts to persuade Parliament to legislate on the subject. He argued in favor of one such proposal: "First, it would set a moral pattern for the nation which will assuredly influence attitudes and practices in wider spheres. Secondly, it would witness to the world, and particularly to peoples of the newly emerging nations, the acceptance by Britain of the principle of racial and human equality."[3]

A continuing theme throughout the early debates was the importance of the United States' experience in this area. "Nobody who has been to America during recent years can doubt," argued Fenner Brockway (now Lord Brockway) on another occasion, "that anti-discrimination legislation could have salutary effect."[4] From 1960 onwards, the support for legislation widened to include members of both parties, and after the use of physical violence against Black people in London and Nottingham in 1958, the Labour Party issued a statement urging the Conservative Government to outlaw "the public practice of discrimination" and pledged the next Labour Government to introduce such legislation. The Race Relations Act 1965 made it unlawful to discriminate on racial grounds in specified places of public resort. It also contained provisions dealing with racial restrictions on the transfer or tenancies and penalizing incitement to racial hatred. Section 6 of the Race Relations Act 1965, stated that a person shall be guilty of an offence if with intent to stir up racial hatred he publishes or distributes written matter which is threatening, abusive, insulting or uses in any public place or at any public meeting words which are threatening, abusive, or insulting. The maximum penalties under the offence were imprisonment for six months and/or a fine of £200 on summary conviction. Prosecutions could only take place with the consent of the Attorney General. The incitement to racial hatred provision is one of the few uses of the criminal law in the present race relations legislation, because such incitement is regarded as an offence against public order.

The 1965 Act created a Race Relations Board and a network of local conciliation committees, which were to investigate complaints and attempt, where appropriate, to settle any differences between the parties and obtain a satisfactory assurance against any further unlawful discrimination where the process of conciliation was successful. The Attorney

General (or in Scotland, the Lord Advocate) had the sole right to determine whether to bring civil proceedings. Conciliation, rather than being adopted as a more effective method of enforcement, was included, according to Lord Stonham, a government spokesman, "to avoid bringing the flavor of criminality into the delicate question of race relations."[5] The government hoped that court litigation would not arise under the law and actively wanted to prevent it. The number of complaints made under the Race Relations Act 1965 were small and a large proportion fell outside the scope of the Act.

Between 1965 and 1968 there was a well-organized campaign by a number of pressure groups for an extension and a strengthening of the anti-discrimination law. During this period the actual extent of discrimination was systematically investigated for the first time by the Political and Economic Planning (PEP) and their findings were published in April 1967.[6] What this report established above all was that racial discrimination was a serious and growing problem, that since it was related more to color than to foreign origin, the problem would not solve itself with the mere passage of time, and indeed, that if left alone race relations would become worse. The PEP report also threw some light upon the cause of the problem. It indicated that people practice discrimination less because they are bigots, than because they fear the prejudices, real or presumed, ascribed by them to others. The PEP report found that racial discrimination in Britain was the product of social conformity - prejudice by proxy rather than of personal bigotry. The events in the United States in the mid-sixties also influenced the policy-makers in the United Kingdom. It was feared that identical development could take place in the United Kingdom. Moreoever the PEP report indicated that the danger was far from being hypothetical.

The objectives of the legislation were clearly described by the Race Relations Board in their first annual report, published in April 1967.[7] These were related directly to the character of the problem revealed by the PEP. They summarized the role of the legislation as follows: a law is an unequivocal declaration of public policy; a law gives support to those who do not wish to discriminate but who feel compelled to do so by social pressure; a law gives protection and redress to minority groups; a law thus provides for the peaceful and orderly adjustment of grievances and the release of tensions; a law reduces prejudice by discouraging the behavior in which prejudice finds expression.

Moreover, it was obviously as important to frame the legislation in an effective, practicable form as it was to define the objectives. In October 1967, Prof. Harry Street's Committee[8] published their report which examined the legislation choices available to Parliament. They assessed the effectiveness of such laws in other countries and recommended the type of law which would be appropriate if Parliament decided to introduce legislation. The committee were impressed by the method of enforcement adopted in the United States of America and Canada where special administrative agencies use education, persuasion and conciliation, and only in the last resort make legally enforceable orders. The report endorsed the philosophy underlying the North American legislation that, "the primary aim is not to seek out and punish discrimination... the law is concerned to create the climate of opinion which will obviate discrimination."[9] It, therefore, took the view that similar techniques of law enforcement were appropriate for Britain.

They, however, recognized that the achievements of the North American commissions had been disappointed mainly due to defective powers and defective administration. Main areas of defective powers, they argued, were dependency on complaints, no subpeona powers, inability to deal with breaches of conciliation, and insufficient remedies for the complainants. In the administrative area they pointed to delays in processing complaints, bending to political pressures, acceptance of inadequate settlements, and over anxiety to conciliate at the expense of effective enforcement. Many of these, they stated, were the result of the failure of state and federal governments to give the commission support, particularly financial support.

While recognizing the weaknesses of the North American commissions, they considered that these defects could be avoided by giving the board in the United Kingdom powers which the North American commissions lacked. However, as we shall see later, the powers which the North American commissions lacked were not given to the Race Relations Board in 1968. The administrative defects, they argued, could be avoided by "governmental determination that it shall succeed..."[10] They strongly argued that "there is no necessary correlation between the quality of the drafting of a code concerning racial discrimination and the effectiveness of that code in operation. The machinery to implement the law is as important as the substantive law itself."[11] Their recommendations were both novel and radical within the context of existing English laws. Although the principle of conciliation by an administrative body had been introduced in the Race Relations Act 1965 neither the board nor any other administrative agency in Britain possessed the wide range of new powers which the Street Committee proposed for the Race Relations Board.

The Race Relations Act 1968

By the end of 1968 the Race Relations Act 1968 came into force, 18 years after the first anti-discrimination Bill had been presented to Parliament and five years after the campaign for comprehensive legislation had begun in earnest. This Act was won against formidable odds. As the Bill was going through Parliament, there increasingly grew extreme and effective attacks on Black immigration and immigrants. The Commonwealth Immigrants Act 1968 was rushed through Parliament in three days and Enoch Powell made his first controversial speech against immigration and immigrants. It was a product of skillful lobbying by interested pressure groups but the racial minorities at that time consisted mainly of recent immigrants whose claim to equal treatment was inevitably made with less insistence and understood with less sympathy. There was little public awareness of the nature or extent of racial discrimination. There was no ideal of equality, embodied in a written constitution or elsewhere. Lester and Bindman said: "There was something unusual in the process by which the race relations legislation came to be enacted. The legislation yielded to a pressure group which was urging them to give a lead before the problem of racial discrimination grew worse; they did not merely legislate against existing problems or in defence of legitimate existing interests."[12]

The Race Relations Act 1968 repealed and replaced the provision of the 1965 Act dealing with discrimination in places of public resort. It extended the scope of the law to apply to a wide range of situations in employment, housing, the provision of goods, facilities and services to the public, the publication or display of discriminatory advertisements or notices. The 1968 Act also reconstituted the Race Relations Board, increasing both its membership and its functions. The board and its nine regional conciliation committees had a duty to investigate all complaints of unlawful discrimination except for employment complaints, which were dealt with, where appropriate, by suitable industrial machinery approved by the Secretary of State for Employment.

Complaints about dismissals on racial grounds were dealt with by industrial tribunals in the same way as unfair dismissal cases. There were different procedures for employment complaints because the major federation of employers, the Confederation of British Industry, and the federation of trade unions, the Trades Union Congress were initially opposed to race legislation. When they eventually agreed to the inclusion of employment in the Act, it was only on the condition that internal disputes procedures must be exhausted first. The use of industry machinery was thus a compromise between the industrial relations practice and the need for government intervention where the parties themselves had been unable to solve the problem.

The board was also able to investigate a matter where it had reason to suspect that a person had ben unlawfully discriminated against even though it had not received a complaint. Where the board or its conciliation committees formed an opinion of unlawful discrimination, it attempted to secure a complaint and/or an appropriate assurance as the case may be. When the process of conciliation failed, the board had the exclusive right to bring legal proceedings in which it could claim a declaration, damages on behalf of the victim of unlawful discrimination and an injunction restraining any further unlawful conduct. The 1968 Act also created the Community Relations Commission to complement the work of the Race Relations Board. The commission's task was to promote "harmonious community relations," to co-ordinate national action to this end, and to advise the Home Secretary on any relevant matters.

It is not possible to provide any quantifiable measure of the practical impact of the 1968 Act. But in 1975 the White Paper, Racial Discrimination[13], described the achievements of the 1968 Act as follows: "Generally the law has had an important declaratory effect and has given support to those who do not wish to discriminate but who would otherwise feel compelled to do so by social pressure. It has also made crude overt forms of racial discrimination much less common. Discriminatory advertisements and notices have virtually disappeared both from the press and from public advertisement boards. Discriminatory conditions have largely disappeared from the rules governing insurance and other financial matters, and they are being removed from tenancy agreements. It is less common for an employer to refuse to accept any colored worker and there has been some movement of colored workers into more desirable jobs."

In practice, there were found to be a number of deficiencies in the coverage and enforcement provisions of the 1968 Act. Discrimination, as defined by the Act, that is, the less favorable treatment of one person than another on grounds of color, race or ethnic or national origins, was difficult to prove. The Act did not apply to the present effects of past discrimination or to unintentional, 'institutional' discrimination. The White Paper argued that "it is insufficient for the law to deal only with overt discrimination. It should also prohibit practices which are fair in a formal sense but discriminatory in their operation and effect."[14] Secondly, in most cases the Race Relations Board could do nothing until it received a complaint, and this meant that it was unable to conduct a systematic planned campaign against discriminatory practices. The strategic role of the board, therefore, had been restricted by the inadequacy of its powers to investigate and to deal with suspected discriminatory practices. The requirement that all complaints had to be investigated by the Race Relations Board or its conciliation committees and that the alleged victim of racial discrimination was denied direct access to legal remedies suffered from a double disadvantage. It distracted the statutory agency from playing its crucial strategic role whilst leaving many complainants dissatisfied with what had been done on their behalf by means of procedures which seemed cumbersome, ineffective or unduly paternalistic. Thirdly, the board had no power to subpoena information, it had to rely on complainants or voluntary co-operation. The hope that the special enforcement provisions for employment complaints would stimulate the growth of voluntary procedures was not borne out; the use of existing industry machinery proved cumbersome. Fourthly, it had no power to require unlawful discrimination to be brought to an end, its scope of action was confined merely to securing settlement and a satisfactory assurance in the case of the individual. Moreover, financial compensation had been small. In 1974, the amounts ranged from £2 to £150, the median settlement being £25. Finally, it was difficult to obtain an injunction under the 1968 Act. The board had to prove not only that the defendant had acted unlawfully and that he waslikely, unless restrained, to do so again; it also had to prove that he had previously engaged in conduct of the same kind or a similar kind.

Apart from the weaknesses in the legislation it was also becoming evidently clear that, with some exceptions, the legislation had been ineffective. Evidence from two PEP studies published in June 1974 and September 1974[15] suggested that discrimination was widespread. Despite the fact that the Race Relations Act 1968 had been in operation for six years by 1974, the PEP study of September 1974 found a substantial level of discrimination in all manual job recruitment: "the tests indicated that an Asian or West Indian would, when applying for an unskilled job, face discrimination in at least a third, and perhaps as many as half of all cases." This implied, according to the report, tens of thousands of cases annually, compared with the 150 employment complaints received by the Race Relations Board in 1973.

The government also reviewed the 1965 Act's incitement to racial hatred provisions and concluded that changes were necessary. The White Paper stated: "Relatively few prosecutions have been brought under Section 6 of the 1965 Act and none has been brought under Section 5 of the Theatres Act. However, during the past decade, probably largely as a result of Section 6, there has been a decided change in the style of racist propaganda. It tends to be less blatantly bigoted, to disclaim any intention of stirring up racial hatred, and to purport to make a contribution to public education and debate. Whilst this shift away from crudely racialist propaganda and abuse is welcome, it is not an unmixed benefit. The more apparently rational and moderate is the message, the greater is its probable impact on public opinion. But it is not justifiable in a democratic society to interfere with freedom of expression except where it is necessary to do so for the prevention of disorder or for the protection of other basic freedoms. The present law penalizes crude verbal attacks if and only if it is established that they have been made with the deliberate intention of causing groups to be hated because of their racial origins. In the government's view this is too narrow an approach. It accepts that Section 6 is too restrictively defined to be an effective sanction. It therefore proposes to ensure that it will no longer be necessary to prove a subjective intention to stir up racial hatred."[16]

Unlike the previous initiatives, which were always overshadowed by the immigration legislation, the government's 1975 White Paper was conceived essentially out of a clear intellectual conviction that the existing provisions were not working; that urgent action was necessary and 'a fuller strategy' will have to be deployed than had been attempted. In 1972 Lester and Bindman had argued that "if objectives of the legislation are effectively realized, American jurisprudence concerned with removing the effects of past discrimination will, happily, be only of academic interest. If not, the American legal experience will be of greater and greater relevance."[17] By 1975 the government had decided that the American legal experience was not merely of academic interest but of practical relevance. They said, "Legislation is capable of dealing not only with discriminatory acts but with patterns of discrimination."[18]

The Race Relations Act 1976

The proposals embodied in the 1975 White Paper were translated into the Race Relations Act 1976 which came into force in June 1977. The 1976 Act brought a considerably broadened concept of equality of opportunity between races into British law. The Act dissolved the Race Relations Board and the Community Relations Commission and replaced them with the

Commission for Racial Equality. The new Commission was to have a major strategic role in enforcing the law in the "public interest."[19] Although it can assist individuals in appropriate cases, the commission's main task is to identify and deal with discriminatory practices by industries, firms or institutions.

The Race Relations Act 1976 defines two kinds of racial discrimination - direct and indirect. Direct racial discrimination is said to occur when a person treats another person less favorably on 'racial grounds' than he/she treats, or would treat someone else. 'Racial grounds' refers to 'color, race, nationality (including citizenship) or ethnic or national origins.' Indirect racial discrimination refers to treatment which may be described as equal in a formal sense as between 'racial groups' but discriminatory in its effect on one particular 'racial group.' A 'racial group' is identified by the same set of characteristics used to identify 'racial grounds.' Thus, where an employer requires applicants to pass a test before obtaining employment and that test has the effect of excluding Black applicants and cannot be shown to be significantly related to the performance of the job then that test constitutes unlawful discrimination, irrespective of the motives of the employer. In addition, the Act defines segregation on racial grounds as racial discrimination and makes it unlawful to victimize a person because he/she has asserted his/her rights under the Act.

The Act applies to employment, training and related fields, education, housing, the provision to the public of goods, facilities and services, and to the publication of discriminatory advertisements relating to activities in all these areas. In general, the provisions of the Act apply to the actions of government ministers and government departments, although there is an exclusion clause relating to existing rules restricting employment in the service of the Crown to persons of particular birth, nationality, descent or residence. The Act also applies to local authorities but they are given the additional duty of ensuring that their functions are carried out with regard to the need both to eliminate unlawful racial discrimination and to promote equal opportunity and good relations among people of different 'racial groups.'

The enforcement of the Act has two dimensions, that of the individual remedy and that of the strategic function of the Commission for Racial Equality. Concerning individual remedies, an individual who believes that he/she has been the victim of unlawful discrimination has the right to initiate proceedings in a designated county court or a sheriff court or an industrial tribunal, where appropriate. Complaints in the employment field are made to industrial tribunals while complaints in all other fields are dealt with by designated county courts in England and Wales and by sheriff courts in Scotland. Complaints relating to education have first to be notified to the Minister or Education before they can be brought to court. Individuals may in appropriate cases receive help from the commission both in deciding whether to proceed with a case and in presenting a case in the most effective manner. A standard questionnaire is available from the commission which is to be completed by the alleged discriminator. The commission may give further assistance if it considers that the case raises a question of principle or is too complex for the individual to deal with unaided. The commission itself may institute legal proceedings in respect of persistent discrimination. It alone may institute proceedings in respect of indirect discriminatory practices, discriminatory advertisements, and cases where an individual instructs or attempts to induce another to commit an act of unlawful discrimination. If an industrial tribunal finds in favor of the complainant, it may make an order declaring the rights of the parties, make an order requiring the respondent to pay the complainant compensation or recommend that the respondent take a particular course of action. In the case of the county or sheriff courts, an order declaring the rights of the parties may be made, an injunction or order may be declared, or damages may be awarded.

The commission has the power to conduct formal investigations where discrimination is suspected. It may conduct such investigations on its own initiative or may be required to do so by the Home Secretary. The terms of reference of investigations may be wide ranging or confined to the activities of named persons. The commission has powers, with certain limitations, to compel the production of information and the presence of witnesses. When the investigation is complete, the commission publishes a report which may include recommendations for changes in policies and procedures or recommendations to the Home Secretary for changes in the law. If, in the course of such an investigation, the commission becomes satisfied that a contravention of the Act has occurred, it may serve a non-discrimination notice on the person concerned, which requires not only compliance with the notice, but also the provision of information from time to time so that the commission is able to monitor continuous compliance. In a case of persistent discrimination, the commission may seek an injunction.

The 1976 Act does not permit what has been called 'reserve discrimination.' For example, it is not lawful to discriminate in favor of a Black person in recruitment or promotion on the grounds that other Black people have experienced discrimination in the past. However, the Act does permit certain limited forms of positive action. First, training bodies, employers, trade unions and employers' and professional organisations may provide special training facilities for members of 'racial groups' and encourage them to take advantage of opportunities to do particular work. This means that special training courses may be run for Black people who are significantly under-represented in a particular area of work. But, once having trained, there can be no discrimination in favor of Black people when they apply for a job. Second, there is a general exemption from the entire scope of the Act for action aimed at affording persons of a particular 'racial group' access to facilities or services to meet their special needs with regard to education, training, welfare or any ancillary benefits. This would apply, for example, to a residential home for the elderly Bangladeshis, English language classes for immigrants or advice on birth control given by Indian women to Indian women. The language of this exclusion clause is broad and care must be taken in its interpretation so that it does not become the justification for, for example, 'separate but equal' facilities or quotas in education which would adversely affect Black people. Third, there is a special exemption from the employment provisions of the Act in cases where the holder of a job provides persons of a particular 'racial group' with personal services promoting their welfare and where those services can most effectively be provided by a person of the same group. This would cover employment in the situations referred to in the second instance above.

Finally, the Race Relations Act 1976 amended the Public Order Act 1936 by inserting into it a new section which makes it a criminal offence to publish or distribute written matter or use in any public place or at any public meeting language which is threatening, abusive or insulting and which, taking account of all the circumstances is likely to encourage hatred against a 'racial group.' An exception is made for fair and accurate reports of judicial proceedings and of proceedings in Parliament. Unlike the earlier amendment to the Public Order Act 1936 made by the Race Relations Act 1965, which the 1976 Act replaced, it is no longer necessary to prove that the accused intended to encourage such sentiments. Incitement to 'racial hatred' is a criminal offence dealt with by the criminal courts and prosecutions can be brought only by, or with the consent of, the Attorney General. The enforcement of this section of the 1976 Act is not the responsibility of the Commission for Racial Equality.

Compared with the provisions of the Race Relations Acts of 1965 and 1968 the 1976 Act represents a more determined and comprehensive attempt to reduce and eliminate racial discrimination. How effective the legislation is in practice is another matter.

Effectiveness and Limitations of the Anti-Discrimination Legislation

Before discussing the effectiveness of the race relations legislation it is important to recognize the limitations of such legislation so that it mey be seen in its proper perspective. Firstly, no law can restrain the determined law breaker. It is aimed at those who are ordinarily law abiding. Secondly, legislation will be relevant only if the economic and social environment enables people to develop their individual potential and compete for opportunities on more or less equal terms. Thirdly, it is not sufficient to enact a well-framed statute, it must also be effectively implemented. If not, the statute itself can fall into disrepute. Fourthly, the ultimate remedy must as far as possible redress the wrong. Finally, if the legislation is to succeed in promoting racial equality it must be reinforced by deliberate programs of voluntary action carried out by government, industry and voluntary bodies. Legislation and voluntary action are strengthened by each other. In other words the legislation despite its wide powers, cannot succeed in a vacuum. The success of the law depends upon factors such as minority and majority attitudes, political will, government leadership and backing, judicial and skillful enforcement, critical and far-reaching court decisions, linked with severe penalties for offenders.

The majority of these factors are missing in the U.K. The strong leadership promised by the government in the 1975 White Paper, Racial Discrimination, has not been forthcoming. The political will of central government to eradicate racial discrimination and disadvantage appears to be weak. By setting up an agency outside Whitehall the government appears to have absolved itself of any responsibility. On its own responsibility as an employer and use of its powers as a purchaser of goods and services, the government to date has taken no action despite the presence of a non-discrimination clause in British Government contracts. In the United States the expenditure of federal contract funds is conditional on contractors' commitment not to discriminate. As part of the enforcement system federal contracts are required to maintain records on their employment of minorities and women and in order to remain eligible for federal funding they are also required to develop affirmative action plans.

Requirements for racial and sexual record-keeping are also important elements in the enforcement procedure in the United States. In the U.K. the government has provided no guidance to local authorities on important matters such as record keeping and monitoring which the White Paper described as 'a vital ingredient of an equal opportunity policy.'[20] The government has taken no concrete steps to encourage local authorities to adopt equal opportunity policies. On the whole the posture which the government has adopted towards local authorities has been lacking in conviction. "A coherent and co-ordinated policy"[21] promised by the White Paper has not materialized. Lord Scarman in his recent report said, "Much could be done to achieve a better co-ordinated and directed attack on inner city problems. Looking at the examples of Brixton and Merseyside, conflicting policies and priorities as between central and local government has reduced drive." He warned "unless a clear lead is given by government, in this as in others there can be no hope of an effective response. The evidence I have received suggests that the Black community in Britain are still hoping for such a lead.... If their hopes are dashed again, there is a real danger that cynicism will turn into open hostility and rejection."[22]

Moreover, the trade unions, which are unanimously anti-racist at the national level, are for the most part inactive at the local level and sometimes obstructive. The involvement of the Trades Union Congress and the trade union movement in the strategic use of the law to promote equality has been minimal. Some unions, despite the general support given to the legislation, are still unwilling to see the law used to bring about equality of opportunity in industrial life. Furthermore, there is no evidence of any significant adoption of equal opportunity policies by private employers. Hardly a handful of private industries have adopted equal opportunity policies voluntarily.

Anti-discrimination laws are no more than a means to an end and to be effective other factors must pull in the same direction. The economic, political, social and moral environment must reinforce the legal commitment. This is very far from true in Britain at present. One of the major economic and political changes has been the acceptance of high levels of unemployment as a permanent condition. This has increased the likelihood and exacerbated the effects of discrimination. The unemployment rate among the Black community well illustrates this. The Black unemployed constitute a significant and growing proportion of the unemployed. In 1972 2.4 per cent of the unemployed were Black, but by 1981 the proportion had jumped to 4.0 per cent. Black unemployment is increasing at a faster rate than total unemployment. Between 1972 and 1981 total unemployment increased by 128 per cent but Black unemployment by 325 per cent. Over the last 12 months total unemployment increased by 66 per cent and Black unemployment by 83 per cent. Unemployment for young people generally (under 25) is increasing at a faster rate than for all ages and at a faster rate for Blacks than for Whites. Between 1980 and 1981 unemployment increased by 74 per cent for all unemployed under 25 but by 81 per cent for the Blacks under 25. Between 1980 and 1981 unemployment increased by 112 per cent for United Kingdom-born Blacks.

In such a situation the invocation of legal rights will occur in the setting of scarcity, hence intensifying conflict, which can only weaken public support for effective legislation. Lord Scarman said, "there can be no doubt the unemployment was a major factor in the complex pattern of conditions which was at the root of the disorders in Brixton and elsewhere."[24] He said "wider economic issues are already the subject of vigorous national debate... I do, however, offer one thought for consideration in that debate. The structural causes of unemployment which include remarkable developments in technology, an effect of which is that leading developed countries are losing the attributes of a labor-intensive economy - are deeper and more complex than the mere existence of the current recession. If this analysis is right, we shall have to face its implications. In order to secure social stability, there will be a long-term need to provide useful, gainful employment and suitable educational, recreational and leisure opportunities for young people."[25]

Since June 1977, when the present law became operational, the economic recession and cuts in public expenditures have had a profound effect on minorities. The harsh administration of the immigration laws and the insular nature of the new Nationality Law have increased the sense of insecurity among the Black communities. In the Annual Report for 1981 the Joint Council for the Welfare of Immigrants stated, "It is no coincidence that the year which has seen the most disturbances in some of Britain's cities has also been the year in which nationality and immigration law struck more deeply than ever before into the security of Britain's Black community."[26]

Incidence of racist attacks have been on the increase. A recent study conducted by the Home Office found that Black people are between 50 and 60 times more likely to be the victim of racially motivated incidents than White people and estimated that in one year, about 7,000 incidents would be reported in England and Wales where there was either strong evidence, or some indication, of the presence of racial motivation.[27]

Tensions between the Black communities and the police have increased over the years and the confidence of the Black communities in the police has been declining. Lord Scarman accepted that there was a loss of confidence in the police by significant sections of the population. He found that disorders arose from "a complex political social and economic situation... the riots were essentially an outburst of anger and resentment by young Black people against the police."[28] This loss of confidence has occurred for two reasons. At one level the Black communities complain of lack of protection by he police in the face of racist attacks and at another level they complain of harassment and heavy handedness by the police when dealing with Blacks.

Against this background the anti-discrimination laws have appeared at best ineffective and at worst irrelevant. Consequently Blacks have become cynical of the law and the agency which is entrusted with enforcement has become an easy target of criticism. Apart from the uncongenial environment within which the Commission for Racial Equality is operating it is riddled with other difficulties both internally and externally. The resources allocated to the commission are small. It has a budget of £8 million, a staff of 229, of which only 60 are assigned to law enforcement. It has only two full-time lawyers one of whom works exclusively on assisting individual complainants. The lack of more substantial resources committed to enforcement has had a direct and significant impact on the amount and the type of assistance granted complainants and the number of formal investigations undertaken.

Recently the Home Affairs Committee's report[29] was highly critical of the commission. They said that, "the commission's gravest defect is incoherence." Some doubts have been expressed whether it was right to create one agency with both enforcement and promotional roles. The Home Affairs Committee was of the view that both the law enforcement and the accompanying promotional work should continue to be carried out by one organization but the promotional work should be solely dedicated and related to the eradication of racial discrimination. The 1976 Act united the two formerly separate functions under one body. It was envisaged that the promotional task would represent only a small part of the commission's task and that the main task would be law enforcement. But the way the commission is constituted at the moment a large number of staff are working on promotional activity and a very small number on enforcement. It was also envisaged that the law enforcement duties and the promotional work could be complementary and to some degree interdependent. Instead the advisory and promotional work of the commission is functionally separate from the law enforcement division and consequently the promotional work is not as firmly rooted as it should be in the law enforcement activity. Consequently the commission has hardly completed any major formal investigations. For instance they have not completed significant housing or education investigations. So their record in the exercise of their powers to undertake formal investigations is very disappointing. Forty-five investigations have been started, of which only ten have resulted in completed reports. The ten completed investigations were without exception into small organizations and they have had minimal impact.

The committee's careful scrutiny of the enforcement procedures revealed that apart from unskillful deployment of staff, the enforcement division lacked the necessary experience and that there were unnecessary delays. The commission on the other hand argue that delays occur because of defective enforcement procedures. They pointed out that Section 49(4) of the Act which provides that respondents should have the opportunity of making oral representation to the commission before an investigation begins, in cases where the investigation proposed is into the acts of specifically names persons, is cumbersome. They are of the view that three to four months could be saved if this section were repealed. They argue that a similar period could be saved at a later stage if the provisions of Section 59(5) on non-discrimination notices were repealed. Recently, Master of Rolls, Lord Denning, criticized "the cumbersome methods followed by the commission," which he said were "in danger of grinding to a halt. This is the result of a parliamentary provision which the commission has done its very best to get on with."[30] In any event it is clear that the commission's own shortcomings and defective procedures have blunted the effectiveness of law enforcement. It is, therefore, essential that apart, from wide powers, law enforcement requires a competent enforcement agency and streamlined enforcement procedures.

The Race Relations Act 1976 gave the right to go before an Industrial Tribunal to those who claimed to have been victims of discimination, a right which had not existed under the 1968 Act. It was envisaged that most complainants would either take their own cases to tribunals or that they would avail themselves of legal advice from law centres, trade unions or the like, leaving the commission to purse a more strategic role. This has not happened; the commission remains the major, if not the exclusive, source of advice and assistance to complainants. During the last four years there have been only 62 successful cases in Industrial Tribunals. In 50 of these the commission provided legal representation and in five some other form of assistance. During the same period only 25 cases have reached the county courts, of which only 16 have been successful, and of these all have been brought with the assistance of the commission. Now the commission is receiving a declining number of applications for assistance. In 1978, 1,033 were received, in 1980 only 779. There are many explanations for this. Many people feel that the low amount of damages which are awarded when discrimination is proved does not make the trouble and the expense of a complainant worth while. The absence of back pay remedy and the failure of British laws to provide for bringing of class action whereby the rights of numerous plaintiffs can be adjudicated at one time is a major drawback. It has been recommended that compensation should be available in cases of unintentional indirect discrimination. Others are aware of the difficulty of proving discrimination. The burden of proof is on the applicant who does not always have time, experience or money to collect all the information. In many instances respondents come with a barrage of solicitors and barristers. It is an unequal contest.

Tribunals are inexperienced in dealing with discrimination cases; with a few exceptions, tribunal members do not have the necessary training. The rate of success is disappointingly low and the commission has argued that the burden of proof should shift from the plaintiff to the defendent. In non-employment cases where the cases have to go to a county court, the procedures are dauntingly slow, whereas the procedures of the Industrial Tribunals, where employment cases are discussed, are quicker and less forbidding. Some have argued that consideration should be given to changing the procedure for non-employment cases and that special tribunals should be set up to deal with all discrimination cases. The other major problem is that legal aid is not available to complainants. The extension of legal aid would reduce the need for assistance from the commission in such cases, it would stimulate trade unions, law centres and solicitors to become involved in individual cases and encourage the development of a private law enforcement agency similar to the NAACP Legal Defence Fund in the United States. The Home Affairs Committee argued that, "short of a radical change in the law and practice of handling complaints of discrimination... these factors are likely to become more rather than less strong as disillusionment when the value of the system grows."[31]

Law on incitement to racial hatred too has not been a great success. To date only 21 people have faced charges under Section 5A of the Public Order Act 1936. Of these 15 have been convicted, six have either been acquitted after trial or have had proceedings taken no further than a preliminary stage. The prosecution figures, however, tell only a part of the story. If you look at the number of cases referred to the Attorney-General for possible prosecution one realizes how ineffective this provision has been. For instance the Commission for Racial Equality submitted 43 items to the Attorney-General in 1978 and a further 31 in 1979 and the referrals which were not subject of prosecution included a booklet of photographs with captions such as 'Asian thugs,' 'Black savages' etc. Many have, therefore, identified the failure of the law on incitement at least partly in the Attorney-General's failure to pursue more prosecutions. The Attorney General has stated a number of problems which he thinks exist in enforcing the law: firstly, the offence is extremely difficult to prove and that existence of a grossly offensive leaflet does not by itself prove the offence. One of the problems is to establish that the words used were 'threatening, abusive and insulting,' secondly, there has to be an identifiable person, whether publisher or distributor, to prosecute, and who is not simply distributing to members of an association; thirdly, he pointed out the difficulty of the language used in the section, 'having regard to all the circumstances' and said that where material was distributed only to Black or Jewish community leaders it was impossible to say that racial hatred would be stirred up.

The first problem, that of the general wording of the section, is the one which has received the most attention. The government's Green Paper on public order[32] said that suggestions that law be extended so as to cover the expression of views which are either inherently likely to stir up hatred or which are so objectionable that they should be prohibited whether or not hatred results, would result in a 'radical departure' from existing law. The results of the expression of view would cease to matter and the requirement that words or utterances be threatening, abusive or insulting might also disappear. They argued that there were two major obstacles. The first was to find some defensible principle for determining what views should be proscribed. The second was that the expression of opinion itself would be penalized. This they argued, "would be totally inconsistent with a democratic society in which - provided the manner of expression, and the circumstances, do not provoke unacceptable consequences - political proposals however odious and undesirable, can be freely advocated."

The second problem has arisen in a number of cases. Frequently the publication in question may be anonymous. In other cases, the material has been published in the Republic of Ireland and the publisher is therefore outside the scope of the law. While it is not possible for British law to apply to other states it is possible to detect those who import offensive literature and distribute it within the jurisdiction of the British law. The problem here is primarily one of enforcement and the application of police resources and of the priority to be given to the enforcement of this particular law.

Since the law came into force in 1977 there has been an increase in violence against Black people and their property. According to the Home Office in London alone in 1977 there were 3,429 reported cases of assault, robbery or other violent theft in which the victim was Black; in 1978 3,686 and in 1979 3,827.[33] And in the five years from May 1976 to date at least 26 Black people have been murdered.[34] In 1981 the extent of the violence had reached such proportion that the government established its own enquiry into the extent of racist violence.[35] Despite this, use of the law against incitement has not increased. My view is that a vigorous policy of enforcement is required with a number of specific changes in the law. Firstly the wording of the law should be changed so as to make it less restrictive and easier to prosecute. Secondly, the requirement of the Attorney-General's consent to prosecute should be abolished. Prosecutions should be instituted by the police and consideration should be given to adopting the practice of some other countries, notably France, of allowing anti-racist organizations to bring proceedings on their own initiative. Thirdly, the police should be given the power to arrest under Section 5A of the Public Order Act 1936 which they do not possess at the moment. Finally it must be said that, no matter how well drafted or enforced, a law against incitement to racial hatred can have only a small, though significant, part in countering racism and its effects will always be marginal or non-existent as long as racism and discrimination are practiced and tolerated in other areas.

Conclusion

Anti-discrimination legislation is one element in a total strategy to combat racial discrimination and it should never be seen as the only means to that end. To be effective other forces must also pull in the same direction. The political, economic, and moral forces must reinforce the legal commitment. This is very far from true in Britain at present as has been argued in this paper earlier. The pressing need, therefore, is not for any major changes in the law but for a substantial strengthening of the political, social and economic pressures. In my view, anti-discrimination legislation is a powerful weapon in the armory if skillfully used and it is equally important to recognize that even the mere existence of a formal declaration of equality such as is implicit in any anti-discrimination law draws attention forcibly to de facto inequalities which the law may not be competent to deal with, but which in the long term may be remedied by fundamental social and economic reforms.

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Summary Statement

by

Prof. Wilson A. Head,
President, National Black Coalition of Canada

"It is not enough to fight our own struggles alone; we must support each other. In this way, we who are relatively weak and small in numbers will increase our strength and power. But above all, we must use our strength not only for our own benefit, but for the benefit of all. In so doing, we will have the opportunity to not only obtain justice for all minority groups, but, in addition, build a more humane and caring society for all Canadians."

The problems related to Multiculturalism and race relations are intensified by our having to deal with a wide variety of myths. A major example can be found in our definition, or lack of definition, of race or ethnic relations. Biologically there is only one race. What we call race is a social, cultural, economic or political definition, imprecise and unscientific. But the term serves a useful purpose for those whose interest it is to categorize for the purpose of discrimination, exploitation, and oppression. In our society, it is the Blacks who are exploited -- in addition to the so-called racial and ethnic minorities, the mentally or physically handicapped, the aged, single parents, and others who constitute our disadvantaged groups. We in Western society have treated them with indifference or contempt and have blamed them for their condition.

It is time that we analyze and come to terms with this condition. It is even more important that all exploited groups recognize the reasons behind their plight and join together to change the present situation. Blacks, Chinese, South Asians, etc. must put aside differences and work together with women and other groups. It is not enough to fight our own struggles alone; we must support each other. In this way, we who are relatively weak and small in numbers will increase our strength and power. But above all, we must use our strength not only for our own benefit, but for the benefit of all. In so doing, we will have the opportunity to not only obtain justice for all minority groups, but, in addition, build a more humane and caring society for all Canadians.

Prof. Head spoke extemporaneously. No paper is available for reprinting. These notes, which encapsulate his thoughts, were provided by him subsequent to the symposium.